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DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

Case No.: CV 07-02952 WHA

**PLAINTIFF'S DESIGNATION OF  
WITNESS EVIDENCE BY  
DEPOSITION, RESPONSES TO  
REQUESTS FOR ADMISSIONS AND  
INTERROGATORY RESPONSES,  
DEFENDANT'S OBJECTIONS TO  
DESIGNATION OF RESPONSES TO  
ADMISSIONS**

And Related Counterclaims

TRIAL: May 20, 2008, 7:30 a.m.  
Courtroom 9, 19<sup>th</sup> Floor  
Hon. William H. Alsup

Pursuant to the Court's order dated March 5, 2007, Plaintiff Del Mar Seafoods, Inc.  
attaches the following designations of witness testimony for witnesses that it intends to call  
by deposition, and the Responses to Requests for Admissions and Interrogatory Responses

PLAINTIFF'S DESIGNATION OF WITNESS EVIDENCE BY DEPOSITION, RESPONSES TO REQUESTS  
FOR ADMISSIONS AND INTERROGATORY RESPONSES

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DMS\Point Loma\2501

1 that it intends to rely on at trial:

2 I. Christene Cohen

3 II. Leonard Cohen

4 III. Michael Cohen

5 IV. David Alan Kobak

6 V. Defendants Barry Cohen, Chris Cohen's (aka Christene Cohen) Response to  
7 Plaintiff's First Set of Requests for Admissions; and

8 VI. Defendants Barry Cohen, Chris Cohen's (aka Christene Cohen) Response to  
9 Plaintiff's First Set of Interrogatories

10  
11 *A ruling is needed only as to Defendants' response to RFA No. 20: RFA No. 20*  
12 *requests Defendants to admit Del Mar has a valid maritime lien on the Vessel. Defendants*  
13 *have objected to the response as cumulative based on the misunderstanding that the*  
14 *admitted fact has already been stipulated to in the Joint Final Pretrial Order. All that was*  
15 *stipulated to in the Joint Final Pretrial Order, however, was that Del Mar has a valid*  
16 *Preferred Ship Mortgage on the Vessel under 46 U.S.C. § 31321 et seq. (Stipulated Fact*  
17 *No. 5 at pg. 3) which is not the same as Defendants' response to RFA No. 20 admitting*  
18 *Del Mar has a valid maritime lien, if Del Mar has a valid Preferred Ship Mortgage..*

19  
20  
21 Dated: May 19, 2008

COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS, LLP  
Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

22  
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26 By: /s/  
Gregory W. Poulos

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DMSI Point Loma/2504

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Deposition of CHRISTENE COHEN January 11, 2008

DEL MAR SEAFOODS v COHEN

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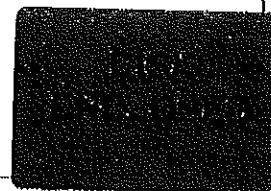
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FOR:  
GREGORY W. POULOS, ESQUIRE

CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

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## Deposition of CHRISTENE COHEN

BSA XMAX(1/1)

January 11, 2008

## Page 1

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF CALIFORNIA  
 3 SAN FRANCISCO DIVISION  
 4  
 5 DEL HAR SEAFOODS, INC.,  
 6  
 7 Plaintiff,  
 8  
 9 vs.  
 10  
 11 No. CV 07-02952 WHA  
 12 BARRY COHEN, CHRIS COHEN aka  
 13 CHRISTENE COHEN, in personam  
 14 and P/V POINT LOMA, Official  
 15 Number 518298, A 1968  
 16 steel-hulled, 126-gross ton,  
 17 70.0-foot long fishing vessel,  
 18 her engine, tackle,  
 19 furniture, apparel, etc., in  
 20 rem, and Docs 1-10,  
 21 Defendants.  
 22  
 23 DEPOSITION OF CHRISTENE COHEN  
 24 Scottsdale, Arizona  
 25 Friday, January 11, 2008  
 10:00 a.m.  
 REPORTED BY RANDI J. FRIEDMAN, Arizona CSR No. 50505

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1 APPEARANCES:  
 2  
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 14  
 15  
 16  
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1  
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 4  
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 6 \*\*\*  
 7  
 8 The Deposition of CHRISTENE COHEN, a witness  
 9 herein, taken pursuant to Notice, before Randi J. Friedman,  
 10 Certified Court Reporter, State of Arizona, at A.A. NICHOLS  
 11 CERTIFIED REPORTERS, 2807 N. Hayden Road, Scottsdale,  
 12 Arizona, on Friday, January 11, 2008, commencing at or about  
 13 (10:00) a.m.  
 14  
 15 \*\*\*  
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 25

## Deposition of CHRISTENE COHEN

BSA XMAX(2/2)

January 11, 2008

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1 Scottsdale, Arizona  
2 Friday, January 11, 2008  
3 10:00 a.m.  
4

CHRISTENE COHEN,

5 a witness herein, after having been first duly sworn,  
6 testified as follows:  
7 \*\*\*  
8  
9

## EXAMINATION

BY MR. POULOS:

10 Q. Good morning, Ms. Cohen. Could you state your  
11 full name for the record.

12 A. Christene, spelled c-h-r-i-s-t-e-n-e Layne,  
13 L-a-y-n-e, Cohen, C-o-h-e-n.

14 Q. Ms. Cohen, have you ever had your deposition  
15 taken before?

16 A. No.

17 Q. You're currently separated from your husband,  
18 Barry Cohen; is that right?

19 A. Yes.

20 Q. And how long have you been separated?

21 A. Since December 28th of '07.

22 Q. When did you file for divorce?

23 A. The exact date, I'm not -- I don't know.  
24  
25

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1 Q. What's your best estimate?

2 A. Maybe that same day.

3 Q. Let me tell you some of the questions for a  
4 deposition so you kind of understand what we're doing here;  
5 okay? The main thing that you need to know is that the oath  
6 that you've taken is the same oath that you take if you're  
7 testifying in court.

8 A. Correct.

9 Q. So the same obligation, tell the truth, the whole  
10 truth, nothing but the truth. The whole thing you've heard  
11 on television before, it's the same, even though we're  
12 sitting in a court reporter's office; okay?

13 A. Uh-huh.

14 Q. Is that yes?

15 A. Yes.

16 Q. Rule No. 2, we need verbal, audible responses.  
17 Uh-huh or nods of the head, the problem is they require the  
18 court reporter to actually interpret whether you're shaking  
19 your head up or down or sideways or what uh-huh means,  
20 whether it's yes or no, so it's important for you to give us  
21 verbal, audible responses; okay?

22 A. Okay.

23 Q. Everything that you say is going to be taken down  
24 by the court reporter, and at the end of the deposition,  
25 some time in the next few weeks, you'll be given a

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1 transcript of the deposition and you'll have a chance to  
2 read it and make any changes to the deposition if they're  
3 necessary to correct your answers; okay?

4 A. Okay.

5 Q. Easy process. She'll either give you an errata  
6 sheet to write it down, or you can write it down, cross  
7 something out, write in the correct answer above it, initial  
8 it.

9 I want to caution you, you're always welcome to  
10 change your answers. You can't change my questions, but if  
11 you do change your answers in a significant way, I or your  
12 own counsel in this case could comment on those, and it  
13 might affect how the judge views your testimony at trial.  
14 So it's important for us to get your best testimony today;  
15 okay?

16 A. Okay.

17 Q. To that end, if we're going through the testimony  
18 today and you need to go back and change something, that's  
19 perfectly fine for you to do that. Just tell me, wait a  
20 minute; this reminds me of something else I said earlier. I  
21 want to change that or I want to revisit that issue. It's  
22 perfectly fine to do that.

23 In some respects, this is more of a conversation  
24 than just a question/answer session; okay?

25 A. Okay.

Page 8

1 Q. As a conversation, if you don't understand my  
2 questions, just tell me that. I'm happy to work with you.  
3 I want to make sure that you understand what I'm asking you  
4 before you provide an answer; okay?

5 A. Okay.

6 Q. If you need to take a break at any time, you're  
7 more than welcome to do that. Again, just let me know;  
8 okay?

9 A. Okay.

10 Q. Is there any reason that you know of, whether  
11 you're on medication or something that might affect your  
12 ability to recall events, or you're not feeling well; is  
13 there any reason why you can't give your best testimony  
14 today?

15 A. No.

16 Q. You're aware we're here because of a lawsuit  
17 filed by Del Mar Seafoods against yourself and Barry Cohen;  
18 is that right?

19 A. Yes.

20 Q. When did you first learn of that lawsuit?

21 A. When my attorney was served.

22 Q. Which attorney are you talking about?

23 A. That would be Dennis Caspo, my divorce attorney,  
24 when he was notified.

25 Q. Do you recall when that was?

Deposition of CHRISTENE COHEN

BSA XMAX(3/3)

January 11, 2008

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1 A. Approximately -- exact date, no.  
 2 Q. In a deposition, if you don't know something, the  
 3 answer you just gave is perfectly acceptable. If you don't  
 4 know something, "I don't know" is a great answer. I'm  
 5 entitled to your best estimate when you have one, where you  
 6 can come up with one. And I want to make a distinction for  
 7 you between a guess and an estimate.  
 8 If you're just picking a time, a date out of thin  
 9 air and you have no rational basis for it, that's a guess.  
 10 I don't want you to guess about anything, but I am entitled  
 11 to your best estimate. So, for example, when I ask you for  
 12 a date or a time, you may not recall specifically as you did  
 13 with your date of separation or the date you filed your  
 14 divorce. It may have been the same day. You know, if you  
 15 can narrow it down, I'm entitled to that; okay?  
 16 A. Okay.  
 17 Q. So when I ask you, you know, when you first  
 18 learned about it and you said, well, it was when my attorney  
 19 was served, I've asked you now when was that; you don't  
 20 know, but can you narrow the time period? Can you give me  
 21 an estimate or an approximate time?  
 22 A. No.  
 23 Q. Was it within the last month or two?  
 24 A. No.  
 25 Q. Was it within the last six months?

Page 10

1 A. Yes.  
 2 Q. Who is your divorce attorney?  
 3 A. Dennis Caspe, C-a-s-p-e from Santa Cruz.  
 4 Q. Where was your divorce proceeding filed? Is that  
 5 in Santa Cruz?  
 6 A. Correct.  
 7 Q. How far along are your divorce proceedings?  
 8 A. We have not started discovery.  
 9 Q. Have you prepared in your divorce proceedings a  
 10 listing of assets and liabilities?  
 11 MS. FANGER: I'm going to object. What she's  
 12 been doing in her divorce proceedings is privileged, because  
 13 that's between her and Mr. Caspe.  
 14 MR. POULOS: Actually, it's not. It's public  
 15 record.  
 16 MS. FANGER: You can ask if she's prepared  
 17 anything public.  
 18 MR. POULOS: She may not know whether it's  
 19 public or not, but anything that she's prepared in terms of  
 20 assets and liabilities is something that would be filed with  
 21 the court, and it becomes part of public record.  
 22 MS. FANGER: Are you asking what she's told?  
 23 MR. POULOS: I'm asking her what she's  
 24 prepared, whether it has yet been filed or not. I'm  
 25 entitled to know whether she's prepared it, and then we

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can -- without going into specifics yet, we'll find out then  
 2 if it's been filed. And then if it's been filed, we can go  
 3 into that.  
 4 MS. FANGER: But what she's prepared may or  
 5 may not become filed, so --  
 6 MR. POULOS: Preparation by her of a document  
 7 is not attorney/client communication. It's a preparation of  
 8 a document by her.  
 9 MS. FANGER: But she's prepared it with her  
 10 attorney.  
 11 MR. POULOS: I don't know that, and I don't  
 12 think you do either.  
 13 MS. FANGER: What if we start with if she's  
 14 filed anything, if she knows the attorney's filed anything,  
 15 and we can ask about the public files first.  
 16 BY MR. POULOS:  
 17 Q. Do you know if your attorney has filed any  
 18 statement of assets or liabilities?  
 19 A. No.  
 20 Q. You don't know or he has not?  
 21 A. He has not.  
 22 Q. Have you sat down and prepared on your own a list  
 23 of your assets and liabilities?  
 24 A. No.  
 25 Q. Have you received from Barry a list of assets and

Page 12

1 liabilities?  
 2 A. No.  
 3 Q. Are you aware of any debt that you owe to Del Mar  
 4 Seafoods?  
 5 A. Yes.  
 6 Q. All right. Do you know how much that debt is?  
 7 A. No.  
 8 Q. What is the debt for?  
 9 A. An agreement between Joe Cappucco and Barry  
 10 Cohen.  
 11 Q. For what?  
 12 A. I'm not sure.  
 13 Q. What is your understanding of it?  
 14 A. A business that -- an agreement that the two of  
 15 them had.  
 16 Q. What was that business agreement for?  
 17 A. The boat. It had to do with the Point Loma.  
 18 Q. Do you know what it had to do with the Point  
 19 Loma?  
 20 A. No.  
 21 Q. Have you ever seen any pleadings filed in this  
 22 case?  
 23 A. I don't know.  
 24 Q. Have you seen any pleadings in this case?  
 25 A. Yes.



Deposition of CHRISTENE COHEN

DBA XMAX(9/6)

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1 windy, ba-dee-dee-da. Oh, I'm sorry. If they were at home  
2 port or, you know, where they were.

3 Q. Did you talk to captains at all about their catch  
4 and how the vessel was doing?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. All right. And that was -- were you -- since you  
9 were doing payroll, were you also doing payroll for the  
10 fishing vessel, Point Loma?

11 A. No.

12 Q. Who was doing that?

13 A. Barry Conner.

14 Q. Do you know what the earnings were for the Point  
15 Loma in, say, between 2004 and 2007?

16 A. No.

17 Q. Do you have any information at all about the  
18 profits and loss of the vessel during any period of that  
19 time?

20 A. No.

21 Q. The fishing vessel is controlled through a Sub  
22 S-Corporation; isn't it?

23 A. Clarify. I don't know.

24 Q. It's owned by you, but then you transferred title  
25 to the Point Loma Fishing Company, Inc.; is that right?

Page 18

1 A. I don't know.

2 Q. You don't know what the current ownership is of  
3 the fishing vessel?

4 A. No.

5 Q. You said you're a half owner of it. You say you  
6 do not know how it's owned?

7 A. I do not.

8 Q. Did you participate in setting up a California  
9 Sub S-Corporation?

10 A. There was a meeting, and I don't know the  
11 specifics about it.

12 Q. When you say there was a meeting, what meeting  
13 are you referring to?

14 A. Some kind of meeting. Barry told me that we  
15 needed protection in case a crew person got injured on the  
16 boat or something like that.

17 Q. Did he tell you, you needed protection in case --  
18 well, you're aware of a lawsuit filed against the Port St.  
19 Louis Harbor District; is that right?

20 A. Yes.

21 Q. Did Barry tell you, you needed protection against  
22 the possible loss of that lawsuit?

23 A. Yes.

24 Q. Was the vessel transferred into the Sub  
25 S-Corporation in order to protect it in case you needed to

Page 19

1 declare bankruptcy?

2 A. I don't know.

3 Q. Was that discussed at all?

4 A. No.

5 Q. When was the meeting that Barry told you that  
6 they were transferring the vessel because you needed  
7 protection?

8 A. I can only give a window period on this question.  
9 We lived in Cambria. It's before we moved to Aptos.

10 Q. When did you move to Aptos?

11 A. I will have to look at the documents. I don't  
12 know.

13 Q. What documents would you look into?

14 A. Purchase of the home.

15 Q. You moved to Aptos when Barry took a position  
16 with Del Mar Seafoods up in Monterey; is that right?

17 A. Watsonville, yes.

18 Q. Watsonville.

19 What did Barry discuss with you regarding that  
20 employment with Del Mar?

21 A. That -- that it was a good thing that we were  
22 moving up there, and that he could be part of the Del Mar  
23 team.

24 Q. Did he tell you that he was guaranteed lifetime  
25 employment?

Page 20

1 A. I don't know.

2 Q. Do you have any knowledge of the damages that are  
3 alleged to have been sustained by the fishing vessel as a  
4 result of the arrest?

5 A. Just what I have read.

6 Q. What have you read?

7 A. What was in the lawsuit. The papers from the  
8 lawsuit.

9 Q. Okay. But independent of just papers in the  
10 lawsuit --

11 A. No.

12 Q. -- you actually don't have any knowledge of that?

13 A. No.

14 Q. All right. Do you have any knowledge of what the  
15 earnings have been of the fishing vessel in 2007?

16 A. No.

17 Q. Do you have any knowledge of the amount of the  
18 mortgage owed on the vessel?

19 A. No.

20 Q. Do you have any knowledge of the amount of money  
21 owed under a promissory note to Del Mar?

22 A. No.

23 Q. Did you have knowledge of the amount owed on a  
24 promissory note at the time that you signed that note?

25 A. Could you repeat that?

Deposition of CHRISTENE COHEN

USA XMAX(8/0)

January 11, 2008

Page 21

1 Q. You signed a promissory note to Del Mar; is that  
 2 right?  
 3 A. Uh-huh yes.  
 4 Q. And you signed a promissory mortgage, giving Del  
 5 Mar a preferred mortgage over that vessel; is that right?  
 6 A. I don't know.  
 7 Q. When you signed the promissory note, do you  
 8 recall what the amount of the note was?  
 9 A. I believe it was 216,000.  
 10 Q. Do you recall how the signing of a -- or entering  
 11 into a promissory note with Del Mar came about? What was  
 12 the background on that?  
 13 A. What I recall is that there were repairs done to  
 14 the boat. What repairs, I do not know.  
 15 Q. Do you recall when the promissory note was made?  
 16 A. No.  
 17 MR. POULOS: Let's go off the record for a  
 18 second.  
 19 (Whereupon there was a discussion off the  
 20 record.)  
 21 BY MR. POULOS:  
 22 Q. Did you have any discussion with Barry regarding  
 23 his termination of employment from Del Mar?  
 24 A. Yes; I believe I asked him when he came to work,  
 25 what happened.

Page 22

1 Q. And what did he tell you?  
 2 A. He didn't know.  
 3 Q. You're aware that in the lawsuit against the Port  
 4 of St. Louis Harbor District, there was a request for  
 5 attorneys' fees; is that right?  
 6 A. Yes.  
 7 Q. And you're aware that the request by Barry to  
 8 receive his attorneys' fees was denied by the Court?  
 9 A. Yes.  
 10 Q. And you're aware that the attorneys' fees in that  
 11 case owed to the Miller Star firm that represented Barry are  
 12 somewhere in the range of 2.2 million dollars; is that  
 13 right?  
 14 A. I don't know.  
 15 Q. You know it's in the million-dollar plus range?  
 16 A. Yes.  
 17 Q. Do you know it's in the 2 million dollar plus  
 18 range?  
 19 A. No.  
 20 Q. What was your understanding of the amount?  
 21 A. At the time the trial ended, I believed it was  
 22 over a million dollars.  
 23 Q. In that litigation, I'll represent to you that  
 24 Barry filed a declaration with the Court in which he said  
 25 that if it did not recover his attorneys' fees, he might

Page 23

1 have to declare bankruptcy; were you aware of that?  
 2 A. No.  
 3 Q. Did Barry ever discuss with you the prospect that  
 4 he might have to declare bankruptcy?  
 5 A. No.  
 6 Q. Has that come up in your divorce proceedings?  
 7 A. No.  
 8 Q. What payments, if any, are you aware of under the  
 9 promissory note?  
 10 A. Only the 176,000-dollar one.  
 11 Q. When was that payment made?  
 12 A. When we lived in Aptos. The exact date, I don't  
 13 know.  
 14 Q. Do you have an understanding why that payment was  
 15 made?  
 16 A. Joe Roggio and Joe Cappuccolo wanted a payment. A  
 17 big payment.  
 18 Q. Were you ever party to any discussions about what  
 19 would happen if a big payment was made?  
 20 A. No.  
 21 Q. Were you party to any discussions about the  
 22 accrual of interest on the promissory note?  
 23 A. No.  
 24 Q. Were you ever party to any discussions about the  
 25 forgiveness of any debt in return for payment?

Page 24

1 A. No.  
 2 Q. Were you ever party to any discussions about  
 3 timing of payments under that promissory note?  
 4 A. No.  
 5 Q. Did Barry ever tell you that he was not obligated  
 6 to make payments under that note?  
 7 A. No.  
 8 Q. You're an officer of the Point Loma Fishing  
 9 Company; is that right?  
 10 A. Part owner. Half, yes.  
 11 Q. As a half owner of that company, are you aware of  
 12 any agreements by the company that it would not need to make  
 13 payments on the promissory note?  
 14 A. Can you repeat that question?  
 15 Q. As a part owner of that company, half owner of  
 16 the company, are you aware of any agreements that the  
 17 company had with Del Mar that it would not have to make  
 18 payments on the note?  
 19 A. No.  
 20 Q. As a half owner of that company, are you aware of  
 21 any agreements between the company and Del Mar, that  
 22 interest would not accrue on that note?  
 23 A. No.  
 24 Q. As a half owner of the company, are you aware of  
 25 any agreements between your company and Del Mar, that



Deposition of CHRISTENE COHEN

D8A XMAX(777)

January 11, 2008

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1 monthly payments were not owed on that note?

2 A. I have no knowledge.

3 Q. Michael and Leonard Cohen are your stepchildren,  
4 is that correct?

5 A. Yes.

6 Q. They've never been legally adopted by you?

7 A. No.

8 Q. Are you aware of any assignments between Barry  
9 and Del Mar Seafoods of Interest in the Del Mar Seafoods,  
10 Inc. Old Port Fisheries division?

11 A. Can you clarify that?

12 Q. Sure. You're aware that there was an operating  
13 Joint Venture Agreement between Barry Cohen and Del Mar to  
14 operate the business at Avila Beach; is that right?

15 A. Yes.

16 Q. In this litigation, it's kind of been shorthanded  
17 as the Avila Beach joint venture.

18 Do you understand what I'm referring to by that?

19 A. No.

20 Q. The agreement for Barry -- between Barry and Del  
21 Mar to operate that business that you worked for in Avila  
22 Beach has been known as the Avila Beach joint venture; okay?

23 A. Okay.

24 Q. I'll define that term for you; okay. So when you  
25 were employed down there in Avila Beach by Del Mar Seafoods,

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1 Inc./Old Port Fisheries division, that was what the parties  
2 have generally referred to here as the joint venture, the  
3 Avila Beach joint venture; okay?

4 A. When we worked there?

5 Q. Yes.

6 A. It was Old Port Fisheries -- it was worded  
7 differently, but, yes, it was a joint venture.

8 Q. What was it worded as?

9 A. Old Port Fisheries/Del Mar.

10 Q. Okay. As the bookkeeper -- well, you weren't  
11 quite the bookkeeper. You said you were employed as hiring  
12 for employees.

13 Who did you hire them for?

14 A. Old Port Fisheries/Del Mar Seafoods.

15 Q. Okay. When you bought supplies, who do you buy  
16 those for?

17 A. Old Port Fisheries/Del Mar.

18 Q. When you made deposits, what account did you  
19 make deposits into?

20 A. A Wells Fargo account.

21 Q. Were you aware -- is that an account that Barry  
22 had signing authority on?

23 A. I believe so; yes.

24 Q. Did you do anything in terms of reviewing checks  
25 that Barry wrote on that account?

Page 27

A. No. No.

2 Q. Were you aware of any sales -- well, what was the  
3 business that you understood of Old Port Fisheries/Del Mar?

4 They bought and sold seafood.

5 Q. Did they sell seafood to Michael Cohen?

6 A. I believe so; yes.

7 Q. And did they sell seafood to Leonard Cohen or his  
8 business, Old Port, Inc.?

9 A. Yes.

10 Q. And were those sales done on an account basis?

11 In other words, their debts for their inventory that was  
12 sold to them was put on an account they maintained with Old  
13 Port Fisheries/Del Mar?

14 A. An invoice, yes.

15 Q. When the operation between -- of Old Port  
16 Fisheries/Del Mar ended, were there still balances owed by  
17 Michael and Leonard?

18 A. I do not know. No. I don't know.

19 Q. Did Barry ever tell you that he had agreed to be  
20 responsible for payment of those balances owed to Del Mar  
21 from Michael and Leonard?

22 A. No.

23 Q. Did you ever hear that from Michael or Leonard,  
24 that Barry had said he would be responsible for those debts?

25 A. No.

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1 MR. POULOS: Let's take a break and see if  
2 that fax has come in.3 (Whereupon there was a brief recess from  
4 11:11 a.m. until 11:17 a.m.)

5 (Exhibit 4 was marked.)

6 BY MR. POULOS:

7 Q. Would you please take a look at Exhibit 7 and  
8 tell me if you recognize this document.

9 A. Yes.

10 Q. And can you tell us what this document is?

11 A. A promissory note.

12 Q. Have you seen it before?

13 A. Yes.

14 Q. Is this the promissory note that you signed in  
15 favor of Del Mar Seafoods, Inc. for the loan of \$215,000.00?

16 A. Yes.

17 Q. And do you see that it says that interest will be  
18 at 7 percent per annum? That's in the first paragraph.

19 A. Yes.

20 Q. Are you aware of any agreements to alter that  
21 term of this promissory note?

22 A. I don't know.

23 Q. Well, are you aware or not?

24 A. No.

25 Q. Okay. Is that your signature on the third page?

Deposition of CHRISTENE COHEN

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- 1 A. Yes.
- 2 Q. Are you aware of -- other than the payment of the
- 3 \$175,000.00 that you mentioned earlier, are you aware of any
- 4 other payments on this promissory note?
- 5 A. No. I just know that he was making payments.
- 6 That's all I know.
- 7 Q. All right. And you're not aware of any
- 8 agreements for forbearance of his obligation to make
- 9 payments?
- 10 A. I don't know what that word means.
- 11 Q. Do you see that it says in that first paragraph,
- 12 "Monthly payments of \$3,000.00 or 15 percent of the gross
- 13 landing receipts of each and every landing of seafood
- 14 product"?
- 15 A. Yes.
- 16 Q. Are you aware of any agreement to alter that term
- 17 of the promissory note?
- 18 A. I don't know.
- 19 Q. You're not aware of any?
- 20 A. No. No. **82**
- 21 (Exhibit **82** was marked.)
- 22 Q. Do you recognize this document?
- 23 A. Yes.
- 24 Q. Have you seen it before?
- 25 A. Yes.

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- 1 Q. Is that your signature on Page 2?
- 2 A. Yes.
- 3 Q. All right. And did you sign it on or around 18
- 4 December, 2007?
- 5 A. Yes.
- 6 Q. Although this copy doesn't have the preferred
- 7 mortgage attached, when you signed this declaration, the
- 8 preferred mortgage was attached to it? It says it was in
- 9 Paragraph 5, the promissory note was attached.
- 10 Was the attached promissory note the one we just
- 11 looked at?
- 12 A. I believe so; yes.
- 13 Q. Do you maintain a copy of that promissory note
- 14 yourself?
- 15 A. No.
- 16 Q. Do you keep a copy of the preferred mortgage
- 17 that's referred to in Paragraph 5?
- 18 A. No.
- 19 Q. Where were you, if you can remember, in January
- 20 of 2007? Were you living in Aptos?
- 21 A. Yes.
- 22 MR. POULOS: Let me have this marked as
- 23 Exhibit **84**.
- 24 (Exhibit **84** was marked.)
- 25

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- 1 BY MR. POULOS:
- 2 Q. Have you had a chance to look at Exhibit-3?
- 3 A. Yes.
- 4 Q. Do you see at the beginning -- well, do you
- 5 recognize that document?
- 6 A. No.
- 7 Q. All right. You see at the bottom it refers to
- 8 Fishman Cohen as an America Online E-mail address?
- 9 A. Yes.
- 10 Q. That is Barry's E-mail, isn't it?
- 11 A. Yes.
- 12 Q. And Barry sometimes types up E-mails, and then
- 13 just prints them out and mails them out; doesn't he? In
- 14 other words, sends them by E-mail? He types it in the
- 15 E-mail program, and then prints it and sends it?
- 16 A. I don't know.
- 17 Q. Do you see the balance owed in his reference in
- 18 the first paragraph?
- 19 A. Uh-huh.
- 20 Q. Yes?
- 21 A. Yes.
- 22 Q. 134 something?
- 23 A. 139.
- 24 Q. 139 and how much?
- 25 A. 139,749.79.

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- 1 Q. Do you have any reason to disagree with that
- 2 figure as the balance owed as of January 30th, 2007, under
- 3 the promissory note?
- 4 MS. FANGER: Objection. That assumes facts
- 5 not in evidence.
- 6 THE WITNESS: I don't know.
- 7 BY MR. POULOS:
- 8 Q. You don't have any basis to agree or disagree
- 9 with that figure?
- 10 A. None.
- 11 Q. Were you aware of any agreements to include
- 12 additional amounts of debt under the promissory note?
- 13 A. No.
- 14 Q. At the end of the Old Port Fisheries/Del Mar
- 15 Seafoods operation in Avila Beach, there was inventory still
- 16 left over; wasn't there?
- 17 A. I don't know.
- 18 Q. Were you still working at the -- for that entity
- 19 at the time that the entity shut down its operations?
- 20 A. Yes.
- 21 Q. Do you recall when that occurred?
- 22 A. No.
- 23 Q. Do you recall it being -- what month it occurred
- 24 in?
- 25 A. No.

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BSA XMAX(010)

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1 Q. Can you give me a year that that occurred?

2 A. No.

3 Q. In this Initial Disclosure, and we're going to

4 make this an exhibit, it says that you are knowledgeable

5 about quote, plaintiff, and I'll say the plaintiff is Del

6 Mar, my client. "Plaintiff's breach of the promissory note

7 and ship mortgage."

8 What knowledge do you have of Del Mar's alleged

9 breach of the promissory note and ship mortgage?

10 A. Just that the vehicle was arrested unlawfully.

11 Q. Why do you say it was arrested unlawfully?

12 What's your knowledge?

13 MS. FANGER: Objection. That's asking for

14 privileged -- attorney/client privileged information.

15 MR. POULOS: You disclosed her as

16 knowledgeable about discoverable facts. I'm asking what

17 discoverable facts she has. Those are clearly outside of

18 non-discoverable attorney/client communications.

19 BY MR. POULOS:

20 Q. So apart from privileged communications from your

21 lawyer, what knowledge do you have of the alleged breach of

22 the promissory note and ship mortgage?

23 A. I wasn't notified.

24 Q. Of what?

25 A. That there was a problem of any kind.

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1 Q. Okay. From whom?

2 A. Either Del Mar or Barry Cohen.

3 Q. Okay. Apart from not being notified of a

4 problem, what do you mean by that?

5 A. I wasn't aware that anything was wrong and going

6 wrong.

7 Q. How much money have you received from -- let's

8 say in 2007, from the fishing vessel, Point Loma,

9 operations?

10 A. Zero.

11 Q. How much did you receive in 2008 from the Point

12 Loma fishing vessel operations?

13 A. I think \$5,000.00.

14 Q. All right. That was your half or was that the

15 full income to the corporation?

16 A. That was when I left the marriage.

17 Q. And how did you end up with \$5,000.00? What was

18 that for?

19 A. I was leaving the marriage and I needed some

20 money.

21 Q. Okay. And so did you understand that that was

22 income from the Point Loma fishing vessel's operations?

23 A. Yes.

24 Q. And why do you say that? Did it come from

25 special account?

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1 A. Yes. It came from the boat account checkbook.

2 Q. Okay. How much income did you receive in 2008

3 from the Point Loma fishing vessel operations?

4 A. I don't know. Zero.

5 Q. Did the vessel not make money in 2008?

6 A. I do not know.

7 Q. Who is the current captain of the Point Loma?

8 A. I do not know. It's Dave Kablak (sic.) or

9 something like that. David, but I've never met him.

10 Q. Have you spoken with him?

11 A. No.

12 Q. What's the basis for your knowledge?

13 A. Just the documents I've read.

14 Q. In this litigation?

15 A. Yes.

16 Q. What documents have you reviewed in this

17 litigation and preparation for your deposition?

18 MS. FANGER: Objection. It's work product

19 and attorney/client privileged information.

20 MR. POULOS: Not in preparation for a

21 deposition, counsel.

22 MS. FANGER: Documents that we've discussed

23 with her, shown her are --

24 MR. POULOS: If she's reviewed anything in

25 preparation for her deposition, it is discoverable.

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1 BY MR. POULOS:

2 Q. What have you reviewed in preparation for your

3 deposition?

4 A. Just the lawsuit in general.

5 Q. Well, what does that mean?

6 MS. FANGER: Objection. You're asking for

7 attorney/client privileged information about our

8 discussions.

9 MR. POULOS: No, I'm not. I'm not asking

10 about discussions at all.

11 BY MR. POULOS:

12 Q. I'm asking about what documentation you have

13 reviewed in preparation for a deposition in this case.

14 A. What was filed with the Court on the lawsuit.

15 Q. Have you reviewed the Complaint?

16 A. Yes.

17 Q. And have you reviewed the Answer to the

18 Complaint?

19 A. Yes.

20 Q. Have you reviewed a Cross-Complaint?

21 A. Yes.

22 Q. Have you reviewed discovery responses?

23 A. No.

24 Q. Have you reviewed the document -- we'll have

25 marked as Exhibit-4, the Defendants' Initial Disclosures.

Deposition of CHRISTINE COHEN

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made effective as of the 22nd day of October, 2004"; do you see that?

A. Yes.

Q. Does that refresh your recollection as to the time period when the Old Port Fisheries/Del Mar joint venture operation at Avila Beach ended?

A. I don't know.

Q. Did you understand that it was -- you were an employee up to the end; right?

A. Yes.

Q. And you don't recall when you -- even the year you stopped operating or stopped employment with that Old Port Fisheries/Del Mar?

A. I would have to look at a record, like a check stub or something like that, you know. A payroll stub.

Q. How soon after you stopped that employment did you move to Aptos?

A. Very soon.

Q. And when did you move to Aptos?

A. I don't remember.

Q. Again, I'm entitled to your best estimate.

A. Okay. Probably the end of October, and that's a guess.

Q. Of '04?

A. Yes.

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Q. You recall it was in the fall or winter of '04, that you made that move?

A. I think it was fall.

Q. What we often do, and you're not unique in this, and I'm not trying to, you know, put words in your mouth. We often try with witnesses -- recalling dates and times is a difficult thing, so I understand that, but what I do with all witnesses, is try to help you remember things. If you can put it as you've just done in a season; if you can sort of remember, well, I know I spent Christmas of this year or this year in a certain house or some place, those are the sorts of things that can sometimes trigger a memory of, yeah, well, I ended my employment some time around that time period.

I want you to understand, I'm not trying to harass you here. I'm trying to help you in terms of memory, in terms of remembering something here; okay?

A. Yes.

Q. Is it fair to say, then, that you recall starting your move or making the move from Avila Beach and moving up to Aptos in the -- some time in the fall of 2004?

A. Yes.

Q. And you recall that that was very shortly after the operation of Old Port Fisheries/Del Mar Seafoods' business at Avila Beach ended?

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A. Yes.

Q. Do you think it was within that same month that you made that move?

A. I don't recall.

Q. October of '04 -- big event in October is always Halloween.

Do you remember where you spent Halloween -- when your first Halloween was up in Aptos?

A. No.

Q. Did you move into an apartment or a house up there?

A. A house.

Q. Had you purchased that or were you renting?

A. We purchased it.

Q. Okay. Do you remember going up and looking for houses in advance?

A. Yes.

Q. All right. Do you remember when that was?

A. No.

Q. When is your birthday?

A. January.

Q. Do you have any reason to believe that the joint venture -- well, the Old Port Fisheries/Del Mar Seafoods operations did not end on or around this day of October 22nd, 2004?

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A. I don't know.

Q. Is it roughly in that time period, consistent with your memory?

A. It's the best guess.

Q. I always hate that word, "guess."

A. I know; I'm sorry, but that's the best I can do. I don't know.

Q. Is it an estimate or a pure guess?

A. It's an estimate.

Q. Okay. Your best estimate of the time that that operation, Old Port Fisheries/Del Mar Seafoods ended its operations in Avila Beach was around this date in October of '04? That's your best estimate?

A. Yes.

Q. Okay. Did you have any discussions with Barry about the assignment of the joint venture interest?

A. No.

Q. Do you have any knowledge about how this assignment came about?

A. No.

Q. Did you read the promissory note before you signed it?

A. Yes.

Q. Have you made any payments on this promissory note, separate and apart from payments from Barry?



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1 A. No.

2 Q. This is a bad copy, but it was the one that was  
 3 attached to the Initial Disclosures. I'm showing you  
 4 Exhibit 4, and a document with Bates numbers Cohen00009.  
 5 Have you ever seen that document before?

6 A. No.

7 Q. Have you ever discussed with Barry a schedule of  
 8 payments that he was given by Joe Roggio?

9 A. No.

10 Q. How well do you know Joe Roggio? You worked --

11 A. Pretty well. I like him a lot.

12 Q. Do you think -- do you have any reason to believe  
 13 that Joe Roggio has any malice or ill-will towards you?

14 A. No.

15 Q. Do you have any reason to believe that he has any  
 16 malice or ill-will towards Barry?

17 A. I don't know.

18 Q. Do you think he -- from your knowledge and  
 19 experience working with him, do you think he's an honest  
 20 guy?

21 A. Pretty much.

22 Q. That's a little equivocal. Do you have any reason to believe he would be  
 23 dishonest in any of his representations in this case?

24 A. I don't know.

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1 Q. Do you have any reason to believe that?

2 A. I don't know.

3 Q. As you sit here today, can you think of any  
 4 occasion where he's been dishonest with you?

5 A. No.

6 Q. Let me show you a better copy of that schedule of  
 7 payments. I found one. The one I'm going to show you was  
 8 marked as an exhibit to Barry's deposition in the Avila  
 9 Beach litigation.

10 (Exhibit-6 was marked.)

11 That's, I believe, just a better copy of that  
 12 schedule of payments.

13 Does that help you in terms of whether you've  
 14 ever seen that before?

15 A. No.

16 Q. You still have never seen it?

17 A. I have never seen it.

18 Q. In your employment with Old Port Fisheries/Dei  
 19 Mar, you were not the person responsible for keeping track  
 20 of the debts of Michael or Leonard to that extent, were you?

21 A. No.

22 Q. Who was?

23 A. I don't know.

24 Q. Does the name -- I think it's Harriett Shields?

25 A. The bookkeeper was Harriett Shields and Dean

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1 Smith

2 Q. Okay. Do you know if they were the people who  
 3 would track those?

4 A. Yes.

5 (Exhibit-7 was marked.)

6 Q. Have you ever seen Exhibit-7 before?

7 A. No.

8 Q. How well do you know Joe Cappuccio?

9 A. Pretty well.

10 Q. All right. Do you have any reason to believe  
 11 that Joe Cappuccio has any malice or ill-will toward you or  
 12 Barry?

13 A. Not towards me, but I'm sure with Barry.

14 Q. And why are you sure with Barry?

15 A. They're in a lawsuit.

16 Q. Okay. Other than the fact that they're in a  
 17 lawsuit. I mean, he never made any statements to you --

18 A. No.

19 Q. -- that he was angry at Barry or --

20 A. Never.

21 Q. Okay. And he had never done anything to you that  
 22 made you think that he was not -- that he had some personal  
 23 reason to try to cause any harm to you or Barry?

24 A. Not to me.

25 Q. Anything with respect to Barry other than this

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1 lawsuit?

2 A. Nothing comes to mind.

3 Q. Did you feel you were treated fairly as an  
 4 employee?

5 A. Yes.

6 Q. Are you aware of any claim being filed on your  
 7 behalf with the United States Marshal Service arising from  
 8 the loss of that fishing net?

9 A. No.

10 Q. How much was the net worth?

11 A. They're usually around \$30,000.00 a net.

12 Q. Do you know what size net this was?

13 A. No.

14 Q. Do you know when it had been purchased?

15 A. No.

16 Q. Looking at Exhibit-6 or 7, did Barry ever discuss  
 17 with you the addition of amounts beyond the \$215,000.00 to  
 18 the promissory note?

19 A. No.

20 Q. Where did you get the \$175,000.00 that was used  
 21 to make the payment on the note?

22 A. A second mortgage on our house.

23 Q. Was that mortgage taken out solely for that  
 24 purpose, or was it for some other purposes?

25 A. It was taken out for that purpose, and also -- I



Deposition of CHRISTENE COHEN

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1 I think he was going to make payments to Miller Star.

2 Q. All right. The mortgage was for more than  
3 175,000?

4 A. I think so; yes.

5 Q. Do you recall how much it was?

6 A. No.

7 Q. Did you ever receive copies of the invoices from  
8 Miller Star?

9 A. No.

10 Q. Do you know if Barry did?

11 A. Oh, I'm sure.

12 Q. Where were the records of the Old Port

13 Fisheries/Del Mar Seafoods operation kept? Where did you  
14 keep all your records?

15 A. Upstairs in the office.

16 Q. How were they organized?

17 A. The bookkeepers always organized them.

18 Q. You had to work with some of them, I assume, from  
19 employment, hiring, buying of supplies, making -- you know,  
20 banking and payroll deposits.

21 So you had some work with the records; is that  
22 right?

23 A. I worked with the bookkeepers. I mean, I gave  
24 them receipts.

25 Q. Okay. Were those generally kept well organized?

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1 A. Yes.

2 Q. They weren't just miscellaneous documents in  
3 boxes?

4 A. No.

5 Q. Were there files specific to a particular bank  
6 account, so if you wanted to obtain bank statements, you had  
7 a specific file you could go to, to get statements from that  
8 account?

9 A. I don't know.

10 Q. What about payroll? You were working in payroll.

11 If you made payroll payments, those were kept in  
12 a particular file, right?

13 A. I gave them to the bookkeeper, and I don't know  
14 what she did with them. I believe they were sent over to  
15 Del Mar. We had copies at Old Port, and she would send  
16 stuff over to Del Mar.

17 Q. At the close of that business -- 'cause you were  
18 an employee right up to the end; is that right?

19 A. Yes.

20 Q. At the time that it closed, are you aware of a  
21 transfer so that some of the accounts went on to the -- were  
22 transferred over to Del Mar's books from the Old Port  
23 Fisheries/Del Mar's books?

24 A. I don't know.

25 Q. When you agreed to -- you signed a promissory

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note and a mortgage on the Point Loma in favor of Del Mar;  
correct?

3 A. Yes.

4 Q. And you're aware that a vessel needs a fishing  
5 permit to operate; correct?

6 A. Yes.

7 Q. And you're aware it needs nots?

8 A. Yes.

9 Q. You're aware it needs certain machinery on the  
10 vessel?

11 A. Right, yes.

12 Q. Was it your understanding when you executed the  
13 promissory note and mortgage, that all of those things were  
14 part of the vessel that was being mortgaged to Del Mar?

15 A. No.

16 Q. What was your belief as to what was being  
17 mortgaged to Del Mar?

18 A. I just thought that it was a loan and it was  
19 being paid back. That's what I know.

20 Q. You didn't think anything more about it in terms  
21 of what was actually -- what the full amount of the security  
22 was?

23 A. No.

24 Q. Did you have any involvement in efforts to use  
25 the Point Loma for fishing in Mexico?

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1 A. Yes.

2 Q. And what involvement did you have in that?

3 A. Just that I knew that it was going to Mexico with  
4 one of Joe Cappuccio's boats, and my stepson, Michael, would  
5 be running the vessel down there.

6 Q. Did he, in fact, run the vessel down there?

7 A. Yes, he did.

8 Q. During that time period?

9 A. I'm not sure of the dates, but yes, he was down  
10 there for quite some time.

11 Q. Did you ever have any discussions with Barry  
12 prior to the divorce about your moving the corporation down  
13 to Mexico?

14 A. No.

15 Q. Have you discussed at all with Barry in the last  
16 year and a half or since the separation, about moving to --  
17 his moving to Mexico?

18 A. No. Is he moving to Mexico? I'm sorry.

19 Q. You'll have to ask Barry.

20 A. Well, you all seem to know more than me.

21 Q. Are you planning to attend the trial in this  
22 case?

23 A. I don't know.

24 Q. Have you discussed that at all with Barry?

25 A. No.

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Q. What firm is Dennis Caspe with?

A. You know, I don't know. I think he works for himself.

Q. Who is Barry's lawyer in the divorce?

A. Vicki Perry.

Q. How do you spell that?

A. V-I-C-K-I, P-E-R-R-Y.

Q. And you have not yet been deposed in that divorce? You haven't had a deposition taken in that case?

A. No.

Q. What is the last document that you're aware of being filed in that case?

A. In our divorce?

Q. Yes.

A. An extension.

Q. Of what?

A. I believe he got an extension 'til July 2nd on the divorce.

Q. What do you mean, "on the divorce"?

A. Our next court date.

Q. On a court date?

A. Uh-huh.

Q. Are you receiving spousal support?

A. No.

Q. Do you know why you're not receiving spousal

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support?

MS. FANGER: Objection. Attorney/client privileged information.

MR. POULOS: It may be. It may not.

BY MR. POULOS:

Q. To the extent it purely comes from your lawyer, you don't have to answer that, but if you have some knowledge, for example, financial affairs that relate to your receipt of spousal support, then that's not privileged.

A. I don't know. You'll have to say that again.

Q. What is the reason, to your knowledge, that you're not receiving spousal support?

A. A disagreement.

Q. Over?

A. Property.

Q. Is there any element of Barry claiming that he does not have the funds to pay spousal support?

A. He would like me to pay him spousal support.

Q. Okay. What are Barry's current sources of income, if you know?

A. I do not know.

Q. What has he alleged are his current sources of income?

A. The Point Loma, the fishing vessel. And the fish processing company, Old Port. And Social Security, I think.

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I don't know.

Q. Are you aware of how much income he has alleged he receives on a monthly or annual basis from those sources?

A. No.

Q. Have you made any allegation of how much income you have from any of those sources?

A. Zero.

Q. You receive no income from the Point Loma Fishing Company?

A. No.

Q. Have you been told that the Point Loma Fishing Company doesn't generate any income?

A. Yes.

Q. And who has told you that?

A. Barry's attorney.

Q. Barry's attorney?

A. Divorce attorney.

Q. His divorce attorney has told you that?

A. She told my attorney; yes.

Q. Has she told your -- have you learned that it, in fact, operates at a loss?

A. Yes.

Q. Have you been told how much that loss is?

A. No.

Q. Are you aware of a motion for -- that was filed

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In your divorce proceedings in which Barry asked for spousal support?

A. Yes.

Q. And did he file a declaration in that action?

A. I believe so; yes.

Q. Did you ever call Del Mar around the time of your divorce, and tell Del Mar that you were getting a divorce?

A. Yes.

Q. Who did you speak with?

A. Joe Rogglo.

Q. And what did you tell Joe?

A. That we were going to get a divorce.

Q. Do you recall anything else?

A. Just being upset, scared.

Q. Why did you call Joe?

A. I don't remember if I needed information about something. I don't remember.

Q. I don't want to pry into all the aspects of your marriage and the divorce, but it is important for me to confirm a couple of facts, so I apologize. I have to ask this.

A. I want to take a break now.

Q. Okay.

(Whereupon there was a brief recess from 12:12 p.m. until 12:28 p.m.)

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1 BY MR. POULOS:

2 Q. We were just starting to talk about that  
3 conversation you had with Joe Roggio, and I had just a few  
4 questions about that.

5 Is that the only conversation you had with anyone  
6 from Del Mar about your divorce?

7 A. Yes.

8 Q. Okay. Did you tell Joe Roggio in that  
9 conversation that Barry had beat you, or words to that  
10 effect?

11 A. Yes.

12 Q. Do you recall anything else that you told him  
13 about the underlying circumstances that were causing you to  
14 get a divorce?

15 A. No.

16 Q. Did you tell him that you thought it would be a  
17 difficult divorce, one that was going to be expensive and  
18 messy, for lack of a better term?

19 A. I don't recall.

20 Q. You mentioned that you had been told that the  
21 Point Loma Fishing Company and vessel operates at a loss;  
22 yes?

23 A. Yes.

24 Q. Have you heard that also at other times from  
25 Barry?

Page 58

1 A. Yes.

2 Q. It was your understanding that the vessel, even  
3 when it's fishing, is not making a profit?

4 A. I don't know.

5 Q. But that's what Barry told you?

6 A. No. There were some months where the weather was  
7 bad; the boat couldn't go out, so it wouldn't make as much  
8 as other months.

9 Q. Right. But overall in the course of a year, it  
10 operated at a loss?

11 A. What year are you talking about?

12 Q. Say 2005.

13 A. I don't know.

14 Q. 2006?

15 A. I don't know.

16 Q. 2007?

17 A. I don't know.

18 Q. All right. What did Barry tell you?

19 A. He doesn't tell me.

20 Q. But he has told you before that the vessel  
21 operated at a loss?

22 A. If it was windy and the boat couldn't go out,  
23 yes. He would -- yes, it was bad.

24 Q. In the divorce, you've been told the position is  
25 that the vessel operates at a loss?

Page 59

1 A. Yes.

2 Q. And to your understanding that that's on an  
3 annual basis; isn't it?

4 A. I don't know.

5 Q. Have you ever seen the Requests for Production  
6 that were served in this case?

7 A. Yes.

8 Q. And Request for Production No. 44 was "All  
9 documents prepared in furtherance of your divorce  
10 proceedings that evidence and/or relate to your assets and  
11 liabilities."

12 Have you compiled those documents?

13 A. I don't have those documents.

14 Q. You don't have any of the documents in your  
15 divorce proceedings?

16 A. No.

17 Q. Does your lawyer have those?

18 A. Some.

19 Q. Okay. And what documents does your lawyer have?

20 A. I do not know.

21 Q. Have you asked your lawyer to provide you with  
22 those, so you can provide them in this case?

23 A. I know he would if -- if asked.

24 Q. If you asked him.

25 A. Yes.

Page 60

1 Q. And you haven't asked him?

2 A. No.

3 Q. Okay.

4 A. I don't know what to ask him for.

5 Q. Did you send him this Request for Production for  
6 all documents prepared in furtherance of your divorce  
7 proceedings?

8 A. No.

9 MR. POULOS: I'll have this marked as  
10 Exhibit-8.

11 (Exhibit-8 was marked.)

12 BY MR. POULOS:

13 Q. Have you ever authorized Barry to act as your  
14 agent --

15 A. No.

16 Q. -- in this case?

17 A. No.

18 Q. Have you ever authorized Barry to act on behalf  
19 of the marital community in this case?

20 A. No.

21 Q. No?

22 A. No.

23 Q. When did you review the Request for Production of  
24 Documents?

25 A. A few days ago.

## DEPONENT'S CHANGES OR CORRECTION

NOTE:

If you are adding to your testimony, print the exact words you want to add.  
If you are deleting from your testimony, print the exact words you want  
to delete. Specify with "ADD" or "DELETE" then sign and date this form.

If you are deleting from your testimony, print the exact words you want to delete. Specify with "ADD" or "DELETE" then sign and date this form.

PAGE	LINE	CHANGE / ADD / DELETE
57	8	I did not tell Joe Riggio that Barry beat me (delete). (Add) I said that Barry and I had fought and he had pushed me around.
57	11	delete
57	19	(Add) - Yes
59	1	No

Signature: Christina Cohen

Date: 2-25-02

CERTIFIED COPY

January 10, 2008

LEONARD COHEN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

\* \* \*

DEL MAR SEAFOODS, INC., )

)

PLAINTIFF, )

)

VS. )

CASE NO.. CV 07-02952 WHA

)

BARRY COHEN, CHRIS COHEN, )

(AKA CHRISTENE COHEN) IN )

PERSONAM AND F/V POINT LOMA, )

OFFICIAL NUMBER 515298, A )

1968 STEEL-HULLED, 126-GROSS )

TON, 70.8-FOOT LONG FISHING )

VESSEL, HER ENGINES, TACKLE, )

FURNITURE, APPAREL, ETC., )

IN REM, AND DOES 1-10, )

)

DEFENDANTS. )

)

AND RELATED COUNTERCLAIMS. )

)

DEPOSITION OF LEONARD COHEN  
SAN LUIS OBISPO, CALIFORNIA  
THURSDAY, JANUARY 10, 2008  
11:06 A.M. - 11:40 A.M.

REPORTED BY CINDY D. GRIFFITH  
CSR #7281





LEONARD CHOEN

January 10, 2008

<p style="text-align: right;">Page 10</p> <p>1 COULD RECOVER FUNDS FROM YOU IN CONNECTION WITH THE 2 TRANSACTIONS WE'RE GOING TO DISCUSS. DO YOU UNDERSTAND 3 THAT? 4 THE WITNESS: OKAY. 5 (DISCUSSION HELD OFF THE RECORD.) 6 MR. POULOS: LET'S GET GOING. HOPEFULLY THIS 7 WON'T TAKE TOO LONG. 8 Q MR. COHEN, WITH RESPECT TO THE AVILA BEACH 9 LITIGATION, THAT WAS THE LITIGATION, I USE THAT 10 SHORTHAND, BUT I'M REFERRING TO THE LITIGATION THAT WAS 11 BETWEEN YOUR FATHER, YOURSELF, OLDE PORT INN AND OLDE 12 PORT FISHERIES, INC. AGAINST THE PORT SAN LUIS HARBOR 13 DISTRICT. DO YOU KNOW THAT LITIGATION? 14 A YES. 15 Q OKAY. AND IN THAT LITIGATION, YOU AND YOUR 16 FATHER RETAINED THE LAW FIRM OF MILLER, STAR, RIGALLI; 17 IS THAT RIGHT? 18 A THAT IS CORRECT. 19 Q AND YOU RECEIVED INVOICES FROM THAT LAW FIRM 20 FOR THEIR SERVICES; IS THAT CORRECT? 21 A THAT IS CORRECT. 22 Q AND BY AND LARGE, YOU PAID FOR MUCH OF THOSE 23 LEGAL FEES; IS THAT CORRECT? 24 A THAT IS CORRECT. 25 Q BUT THEY WERE SENT TO BOTH YOU AND YOUR FATHER</p>	<p style="text-align: right;">Page 12</p> <p>1 Q OKAY. THE -- IN THAT LITIGATION, THERE WAS A 2 MOTION FOR RECOVERY OF ATTORNEYS FEES BY YOU AND YOUR 3 FATHER AND YOUR RESPECTIVE COMPANIES CONTENDING YOU WERE 4 THE PREVAILING PARTIES; IS THAT RIGHT? 5 A I BELIEVE SO. 6 Q AND YOU RECALL THAT THE COURT DID NOT AWARD YOU 7 THE FEES ON THAT MOTION? 8 A I AGREE. 9 Q IN THAT LITIGATION, YOUR FATHER FILED A 10 DECLARATION, BARRY COHEN FILED A DECLARATION SAYING THAT 11 IF HE DID NOT RECOVER THE ATTORNEYS' FEES ON THAT 12 MOTION, THAT HE MIGHT HAVE TO FILE -- OR IN THAT 13 LITIGATION, HE MIGHT HAVE TO FILE FOR BANKRUPTCY. ARE 14 YOU AWARE OF THAT DECLARATION? 15 A POSSIBLY. YOU KNOW, I DON'T RECALL EVERY -- 16 EVERY DECLARATION IN THE 1,700 PAGES THAT WERE -- THAT 17 WERE PRODUCED. JUST IN THAT ASPECT, BUT -- 18 Q IS IT -- DID YOU EVER DISCUSS WITH YOUR FATHER 19 THE POSSIBILITY THAT HE WOULD DECLARE BANKRUPTCY IF HE 20 DID NOT RECOVER THE ATTORNEYS' FEES? 21 A I HAVE NOT DISCUSSED -- I DO NOT RECALL HIM 22 MENTIONING TO ME FILING BANKRUPTCY IN RELATIONSHIP TO 23 THIS LEGAL ACTION, BECAUSE THIS LEGAL ACTION ISN'T OVER 24 YET. 25 Q THE LEGAL ACTION AGAINST THE HARBOR DISTRICT?</p>
<p style="text-align: right;">Page 11</p> <p>1 BEING JOINTLY LIABLE FOR THOSE FEES? 2 A THAT WOULD BE MY UNDERSTANDING. 3 Q ALL RIGHT. IS THERE AN AMOUNT OF THOSE FEES 4 THAT HAS NOT BEEN PAID? 5 A YES. 6 Q AND CAN YOU TELL US HOW MUCH OF THE FEES ARE 7 OUTSTANDING THAT HAVE NOT BEEN PAID? 8 A THIS IS JUST AN APPROXIMATION. 9 Q YES. 10 A ABOUT A MILLION TWO. 11 Q OKAY. AND HOW MUCH -- IN ADDITION TO THAT 12 OUTSTANDING AMOUNT, HOW MUCH IS -- WAS PAID? 13 A A LITTLE OVER A MILLION DOLLARS. 14 Q SO THE TOTAL FEES, UNDERSTANDING THIS IS AN 15 ESTIMATE, IS SOMEWHERE AROUND 2.2 MILLION? 16 A ON OUR SIDE, CORRECT. 17 Q IN -- WITH RESPECT TO THOSE FEES, IS THERE ANY 18 AGREEMENT BETWEEN YOU AND YOUR FATHER REGARDING WHICH OF 19 YOU WILL BE RESPONSIBLE FOR PAYING THOSE FEES ULTIMATELY 20 IF -- IF THEY ARE OWED? 21 A THE ONLY AGREEMENT THAT I'M AWARE OF BETWEEN MY 22 FATHER AND I WAS WHEN WE FILED THE LAWSUIT, WE BOTH 23 AGREED THAT WE WOULD BE 50-50, AS FAR AS RESPONSIBILITY 24 FOR -- WE DIDN'T EVEN KNOW WHAT WAS COMING UP. JUST 25 RESPONSIBLE FOR WHATEVER.</p>	<p style="text-align: right;">Page 13</p> <p>1 A CORRECT. 2 Q HAS HE MENTIONED TO YOU THE POTENTIAL FOR HIS 3 FILING OF BANKRUPTCY IN ANY OTHER CONTEXT? 4 A I DO NOT RECALL HIM MENTIONING TO ME ANYTHING 5 TO DO WITH BANKRUPTCY. 6 Q THE OLDE PORT INN OPERATES AT A FACILITY IN -- 7 ON THE PIER AT AVILA BEACH; IS THAT CORRECT? 8 A YOU MIGHT HAVE TO HELP ME OUT ON "FACILITY." 9 YOU MEAN ON A LEASE, LEASED AREA? 10 Q YEAH. YOU SHARE A COMMON LEASED AREA FOR OLDE 11 PORT INN AND OLDE PORT FISHERIES, INC.; IS THAT RIGHT? 12 A IT COULD BE DESCRIBED THAT WAY. 13 Q AND THAT'S ON THE PIER AT THE PORT THERE IN -- 14 IN AVILA BEACH? 15 A CORRECT. 16 Q THE -- WITH RESPECT TO OLDE PORT INN, THAT IS A 17 RESTAURANT BUSINESS; IS THAT CORRECT? 18 A CORRECT. 19 Q AND WHERE DO YOU GET THE FISH INVENTORY THAT 20 YOU SELL AT THE RESTAURANT? 21 A PLEASE DESCRIBE A TIME PERIOD. 22 Q OKAY. DURING THE TIME PERIOD, SAY, OF 1999 TO 23 2004. 24 A I WOULD SAY CENTRAL COAST SEAFOODS IS ONE 25 PURVEYOR. JORDANOS WAS ANOTHER SEAFOOD PURVEYOR FOR</p>

4 (Pages 10 to 13)

LEONARD CHOEN

January 10, 2008

Page 14

1 FROZEN. AND I WOULD SAY DEL MAR -- WELL, THE JOINT  
2 VENTURE BETWEEN MY FATHER AND DEL MAR.  
3 Q OKAY.  
4 A THOSE WOULD BE THE THREE.  
5 Q YOU WERE AWARE OF A JOINT VENTURE KNOWN AS  
6 DEL MAR SEAFOODS, INC., OLDE PORT FISHERIES DIVISION?  
7 A I LEARNED MUCH MORE THROUGH THE LAWSUIT THAN  
8 ANY AT THE INITIAL TIME, BUT, YES.  
9 Q WHICH LAWSUIT?  
10 A THE -- AGAINST THE PORT.  
11 Q OKAY. DID YOU -- DID THE RESTAURANT, OLDE PORT  
12 INN, RECEIVE FISH FROM THE OLDE PORT FISHERIES DIVISION  
13 OF DEL MAR, FOR USE AT THE RESTAURANT, IN THE TIME  
14 PERIOD OF, SAY, '99 THROUGH 2004?  
15 A IF THE FISHERY IS THE JOINT VENTURE, THEN, YES,  
16 I PURCHASED FISH FROM MY FATHER AND DEL MAR.  
17 Q AND WHEN YOU PURCHASED THAT FISH, HOW -- HOW  
18 WAS THE PURCHASE DONE? WAS IT DONE ON AN INVOICE BASIS  
19 OR ON A RUNNING ACCOUNT BASIS?  
20 A IT WOULD BE EVERY TIME THAT WE ORDERED  
21 SOMETHING, WE WOULD GET AN INVOICE FOR IT.  
22 Q AND WAS THERE A BALANCE OWED TO THE -- TO THE  
23 OLDE PORT FISHERIES DIVISION IN 2004?  
24 A I WOULD SAY WE ALWAYS HAD A BALANCE OWED TO  
25 DEL MAR. YOU HAVE TO BE TIME -- YOU HAVE TO BE TIME

Page 16

1 ACCOUNTS PAYABLE TO MY FATHER AND DEL MAR.  
2 Q DID YOU EVER DISCUSS THAT BALANCE WITH YOUR  
3 FATHER?  
4 A YES.  
5 Q AND WHEN DID YOU DISCUSS THAT BALANCE WITH YOUR  
6 FATHER?  
7 A DURING THE COURSE OF INCURRING IT.  
8 Q ALL RIGHT. DID YOU EVER DISCUSS THE FINAL  
9 BALANCE OF THAT \$18,000 FIGURE WITH YOUR FATHER?  
10 A NO, I DIDN'T. DIDN'T CONCERN MYSELF WITH IT.  
11 Q WHY DID YOU NOT CONCERN YOURSELF WITH IT?  
12 A BECAUSE MY FATHER SAID THAT HE WOULD JUST TAKE  
13 CARE OF IT, AND I DIDN'T HAVE TO WORRY ABOUT IT, SO I  
14 DIDN'T WORRY ABOUT IT.  
15 Q WHEN DID YOUR FATHER TELL YOU THAT HE WOULD  
16 TAKE CARE OF IT, AND YOU DIDN'T HAVE TO WORRY ABOUT IT?  
17 A PROBABLY BEFORE I INCURRED ANY OF THE -- ANY OF  
18 THE CHARGES, OR ANY OF THE PURCHASE OF FISH.  
19 Q WAS IT YOUR UNDERSTANDING, THEN, THAT INCURRING  
20 THE FISH BALANCES, THAT YOU WERE NEVER GOING TO HAVE TO  
21 PAY THEM?  
22 A HE TOLD ME HE WOULD TAKE CARE OF IT, THAT I  
23 DIDN'T HAVE TO WORRY ABOUT IT.  
24 Q DID HE TELL YOU THAT BEFORE OR AFTER 2004, OR  
25 DURING 2004, IF YOU CAN RECALL?

Page 15

1 SPECIFIC.  
2 (PLAINTIFF'S EXHIBIT 1 WAS MARKED  
3 FOR IDENTIFICATION.)  
4 BY MR. POULOS:  
5 Q WELL, TAKE A MUCH HEAVY LOOK AT EXHIBIT 1, 37  
6 PLEASE. DO YOU SEE ON -- HAVE YOU EVER SEEN EXHIBIT  
7 BEFORE?  
8 A I BELIEVE SO.  
9 Q AND DO YOU RECALL WHEN YOU SAW IT BEFORE?  
10 A IN DEPOSITIONS.  
11 Q IN THE AVILA BEACH LITIGATION?  
12 A POSSIBLY, YES.  
13 Q WAS THAT THE FIRST TIME YOU HAD SEEN THIS?  
14 A YES.  
15 Q DO YOU RECALL WHETHER -- WELL, DO YOU SEE ON  
16 THERE IT SAYS "OLDE PORT INN"?  
17 A UM, YES.  
18 Q AND DO YOU HAVE AN UNDERSTANDING THAT NUMBER,  
19 WHICH IS HARD TO READ THERE, IS \$18,069.10?  
20 A IS THE QUESTION: DO I KNOW WHAT THAT NUMBER  
21 IS?  
22 Q YEAH. DO YOU KNOW WHAT THAT NUMBER REFERS TO?  
23 A I HAVE AN EDUCATED GUESS.  
24 Q AND WHAT'S YOUR EDUCATED GUESS?  
25 A THAT WOULD BE THE AMOUNT OF INVOICES ON OUR

Page 17

1 A HE TOLD ME DURING 2004.  
2 Q DURING 2004?  
3 A CORRECT.  
4 Q DID HE EVER TELL YOU THAT SUBSEQUENT TO 2004?  
5 A I DON'T KNOW IF THERE WAS A NEED TO TELL ME  
6 SUBSEQUENT. POSSIBLY, BUT I DON'T RECALL IT COMING UP.  
7 Q DID HE EVER TELL YOU THAT HE ACTUALLY HAD TAKEN  
8 CARE OF OR PAID IT?  
9 A I DON'T RECALL THOSE EXACT WORDS. AGAIN, HE  
10 SAID HE WOULD TAKE CARE OF IT. I DON'T KNOW EXACTLY  
11 WHAT HE WAS GOING TO DO WITH IT, BUT I WASN'T WORRIED  
12 ABOUT IT.  
13 Q HOLD ON JUST A SECOND -- SORRY ABOUT THAT.  
14 SOMEBODY JUST WALKED INTO MY OFFICE.  
15 WHEN YOU SAID THERE WASN'T A NEED TO TALK ABOUT  
16 IT, I UNDERSTAND THE BASIS FOR THAT STATEMENT, OR AT  
17 LEAST I THINK I DO, BUT MY QUESTION IS A LITTLE MORE  
18 SPECIFIC. DO YOU REMEMBER HIM DISCUSSING THAT BALANCE  
19 WITH YOU AT ANY TIME IN, SAY, 2005, OR AFTER THAT?  
20 A I THINK HE MENTIONED, YOU KNOW, SOMETHING TO DO  
21 WITH THE -- YOU KNOW, SOME OF THE BALANCES OWED, BUT I  
22 DON'T RECALL IN WHAT CONTENTS. I MEAN, I CAN'T BE MORE  
23 SPECIFIC.  
24 YES, HE DID MENTION SOMETHING TO DO WITH MONEY  
25 THAT HE -- OR THAT WE OWED. BUT AGAIN, YOU KNOW, HE

5 (Pages 14 to 17)

LEONARD CHOEN

January 10, 2008

<p style="text-align: right;">Page 18</p> <p>1 PRETTY MUCH SUMMED IT ALL UP EACH TIME WITH, "DON'T 2 WORRY ABOUT IT. I'LL TAKE CARE OF IT," OR "IT'S TAKEN 3 CARE OF." SO HE JUST TOLD ME, "DON'T WORRY ABOUT IT." 4 <del>Q YOU DON'T DENY THAT YOU -- THAT THAT BALANCE</del> 5 <del>OWED WAS FOR PRODUCT DELIVERED TO YOU BY DEL MAR</del> 6 <del>SEAFOODS, OLDE PORT FISHERIES DIVISION?</del> 7 A I -- IF YOU'RE SAYING, DO I AGREE THAT I 8 PURCHASED THE SEAFOOD FROM THAT JOINT VENTURE, YES, I 9 DID. 10 Q AND DID YOU EVER PAY FOR ANY OF THE SEAFOOD 11 THAT YOU GOT FROM THE JOINT VENTURE? 12 A YES, FOR YEARS. 13 Q BUT THEN, AT THE END, THERE WAS A BALANCE, AND 14 THAT WAS WHEN YOUR DAD SAID HE WOULD TAKE CARE OF IT? 15 A NO, THERE WAS A POINT IN WHICH HE SAID THAT -- 16 THAT FROM NOW ON, HE'LL TAKE CARE OF WHATEVER SEAFOOD I 17 PURCHASE FROM DEL MAR OR FROM HIM. YOU KNOW, I ALWAYS 18 LOOKED AT IT AS HIM, BUT IT WAS A JOINT VENTURE. 19 Q OKAY. AND YOU RECALL WHAT -- WHEN THAT 20 PARTICULAR CONVERSATION OCCURRED? 21 A APPROXIMATELY THE MIDDLE OF THE SUMMER OF '04. 22 Q DO YOU RECALL YOUR DAD EVER DISCUSSING WITH YOU 23 THAT HE HAD MADE A PAYMENT OF \$175,000 ON AN ACCOUNT? 24 A NO. 25 Q DID YOUR FATHER EVER MENTION TO YOU ANY</p>	<p style="text-align: right;">Page 20</p> <p>SENSE. THAT'S SUMMING IT UP. 2 Q DID HE SAY ANYTHING IN PARTICULAR ABOUT HIS 3 LIABILITY FOR WHAT THE DEBTS WERE THAT HE WAS LIABLE 4 FOR? 5 A NO, HE DIDN'T GO REALLY INTO DETAIL. 6 Q HAVE YOU EVER DISCUSSED WITH YOUR FATHER THE -- 7 HIS TAKING OUT A LOAN AGAINST HIS PERSONAL RESIDENCE? 8 A DID I DISCUSS WITH HIM? 9 Q YEAH. 10 A TAKING OUT A LOAN, A SECOND ON HIS HOUSE, FOR 11 WHAT? 12 Q WELL, I DIDN'T MENTION A SECOND, BUT FOR ANY 13 PURPOSE? 14 A I ASKED HIM ONE TIME IF HE COULD TAKE OUT A 15 SECOND ON HIS HOME TO HELP ME, AS FAR AS PAYING FOR SOME 16 OF THE LEGAL COSTS. THAT WAS THE ONLY TIME I TALKED TO 17 HIM ABOUT ANYTHING TO DO WITH HIS HOME OR... 18 Q DID HE, IN FACT, TAKE OUT A SECOND TO HELP PAY 19 SOME OF THE LEGAL COSTS IN THAT CASE? 20 A NO. 21 Q IN THE AVILA BEACH CASE? 22 A NO. 23 Q I'M SORRY, YOUR ANSWER? 24 A NO. NO, HE DID NOT. 25 Q ARE YOU FAMILIAR WITH -- DO YOU COMMUNICATE</p>
<p style="text-align: right;">Page 19</p> <p>1 AGREEMENT THAT HE HAD WITH DEL MAR REGARDING PAYMENT OF 2 HIS DEBT? 3 A YES, RECENTLY, BUT I DON'T KNOW, YOU KNOW, 4 THAT'S PART OF THIS LAWSUIT, SO I DON'T KNOW WHAT THE 5 LEGAL -- YOU KNOW, IF IT'S -- I DON'T KNOW WHAT -- IF 6 WHAT HE TELLS ME OR HE TELLS THE ATTORNEYS -- I'D HAVE A 7 GRAY AREA THERE, BUT HE DID TELL ME WHAT WAS GOING ON, 8 SOME BACKGROUND ON HIS PAYMENT IN REGARDS TO THIS 9 LAWSUIT. 10 Q AND WHAT DID HE TELL YOU? 11 THE WITNESS: THE OTHER ATTORNEY, IS IT OKAY IF 12 I SAY THAT TO HIM? I MEAN -- 13 MR. WALSH: IF IT'S A CONVERSATION BETWEEN YOU 14 AND YOUR FATHER NOT IN THE PRESENCE OF A LAWYER AND NOT 15 WITH RESPECT TO GETTING LEGAL ADVICE, HE MAY INQUIRE. 16 THE WITNESS: OKAY. I'M SORRY, SIR, IF YOU 17 COULD REASK THE QUESTION. 18 BY MR. POULOS: 19 Q SURE. YOU WERE JUST SAYING THAT YOUR FATHER 20 HAD DISCUSSED THIS LITIGATION WITH YOU. WHAT DID HE 21 TELL YOU? 22 A HE TOLD ME THAT HIS BOAT GOT SEIZED AND THAT IT 23 WAS RIDICULOUS. THAT HE PAID A LARGE SUM OF MONEY TO 24 DEL MAR, AND THAT IT WAS WAY -- HE WAS WAY AHEAD ON 25 PAYMENTS, AND WHY THEY TOOK THE BOAT DIDN'T MAKE ANY</p>	<p style="text-align: right;">Page 21</p> <p>1 WITH YOUR FATHER AT ALL BY E-MAIL? 2 A YES. 3 Q AND WHAT IS HIS E-MAIL ADDRESS? 4 A I THINK IT'S FISHERMAN COHEN. OR FISHMAN 5 COHEN, BUT I'M NOT 100 PERCENT, BECAUSE IT'S PROGRAMMED 6 IN THE COMPUTER. 7 Q AND IS THAT AN AOL ACCOUNT? 8 A POSSIBLY. 9 (DEFENDANTS' EXHIBIT 4 WAS MARKED FOR 10 IDENTIFICATION.) 11 BY MR. POULOS: 12 Q COULD YOU LOOK AT EXHIBIT 4? 13 A (WITNESS COMPLIES.) 14 Q HAVE YOU EVER SEEN THIS BEFORE? 15 A I HAVE NEVER SEEN THIS. 16 Q OKAY. DO YOU SEE THIS COMES FROM, OR READS AT 17 THE BOTTOM, "AMERICA ONLINE," COLON, "FISHMAN COHEN"? 18 A I DO READ THAT, YES. 19 Q ALL RIGHT. AND DOES THAT HELP YOU RECALL YOUR 20 FATHER'S E-MAIL ADDRESS IS, IN FACT, 21 FISHMANCOHEN@AOL.COM? 22 A THAT WOULD BE A GOOD GUESS. 23 Q DOES YOUR FATHER EVER PRINT OUT THINGS ON -- 24 THAT ARE DRAFTED ON E-MAIL, AND THEN SEND THEM TO YOU 25 JUST BY REGULAR MAIL OR HAND DELIVERY?</p>



LEONARD CHOEN

January 10, 2008

Page 22	Page 24
<p>1 A NO. 2 (DEFENDANTS' EXHIBIT 22 WAS MARKED FOR 3 IDENTIFICATION.) 4 BY MR. POULOS: 5 Q COULD YOU TAKE A LOOK AT EXHIBIT 3, PLEASE? 6 A OKAY. 7 Q DO YOU SEE DOWN THERE IT SHOWS THE BOTTOM 8 PORTION, OLDE PORT INN, INC? 9 A YES. 10 Q AND DO YOU HAVE ANY UNDERSTANDING OF WHAT THOSE 11 CHARGES WOULD HAVE BEEN FOR AS SHOWN ON THIS 12 SPREADSHEET? 13 A PROBABLY FISH INVOICES THAT WERE PURCHASED FROM 14 OLDE PORT FISHERIES DIVISION. AND IT SAYS, "ALL OPEN 15 INVOICES" SO THAT WOULD MEAN THAT THESE ARE STILL 16 OPEN. 17 Q OKAY. DID -- HAS YOUR FATHER EVER ASKED YOU TO 18 PAY HIM FOR THE INVENTORY THAT YOU GOT FROM THE JOINT 19 VENTURE THAT YOU DIDN'T MAKE PAYMENT FOR? 20 A NO. 21 Q WHEN WERE YOU DEPOSED IN THE AVILA BEACH 22 LITIGATION? 23 A APPROXIMATELY FROM JUNE OF '05 THROUGH NOVEMBER 24 OF '05. 25 Q AND IN THAT DEPOSITION YOU TESTIFIED</p>	<p>1 Q COULD YOU TAKE A LOOK AT EXHIBIT 2? 2 A (WITNESS COMPLIES.) 3 Q IT IS LARGELY THE SAME DOCUMENT AS EXHIBIT 1, 4 BUT IT CONTINUES ON BEYOND THAT LAST \$175,000 PAYMENT. 5 DO YOU SEE THAT? 6 A YES. 7 Q OKAY. HAVE YOU EVER SEEN THIS COPY OF THE 8 SCHEDULE OF PAYMENTS BEFORE? 9 A NOT THAT I RECALL. 10 Q DID THE SCHEDULE OF PAYMENTS THAT YOU SAW 11 REFLECT THE \$175,000 PAYMENT? 12 A I BELIEVE SO. 13 Q AND WAS IT AROUND THAT SAME TIME THAT YOU 14 DISCUSSED WITH YOUR FATHER THE BALANCE OWED ON THE OLDE 15 PORT INN DATA? 16 A NOT THAT I RECALL. 17 Q HOW WAS IT THAT YOU CAME TO BE SHOWN A COPY OF 18 THIS THEN? 19 A DURING MY FATHER'S DEPOSITION. 20 Q ARE YOU -- HAS YOUR FATHER EVER TOLD YOU OR 21 SOMEONE ELSE THAT HE WAS NO LONGER RESPONSIBLE FOR THAT 22 DEBT? 23 A HE'S NEVER SAID ANYTHING TO ME ABOUT WHAT YOU 24 JUST SAID. 25 Q OKAY, SO HE'S NEVER TOLD YOU THAT HE DIDN'T</p>
Page 23	Page 25
<p>1 TRUTHFULLY? 2 A YES. 3 Q AND IF YOU WERE TESTIFYING IN THIS CASE WITH 4 RESPECT TO THE ISSUES RAISED IN THAT DEPOSITION, YOU'D 5 GIVE THE SAME TESTIMONY? 6 A WELL, YES. 7 Q ARE YOU PARTNERS WITH YOUR FATHER IN ANY OF HIS 8 CURRENT BUSINESSES? 9 A NO. BUT LET ME ADD, WE ARE ON A LEASE 10 TOGETHER. 11 Q RIGHT. YOU BOTH LEASE THAT PROPERTY ON THE 12 PIER? 13 A THAT ONE LEASE, THERE'S ONE SPECIFIC LEASE THAT 14 WE ARE BOTH LISTED ON. 15 Q HAVE YOU DISCUSSED WITH -- WELL, WITHDRAW. 16 DO YOU KNOW WHO DAVID CANTRELL IS? 17 A YES. 18 Q AND IS HE ALSO YOUR ACCOUNTANT CPA? 19 A YES. 20 Q HAVE YOU DISCUSSED WITH MR. CANTRELL THE DEBTS 21 REFLECTED ON EXHIBIT 1? 22 A NOT TO MY KNOWLEDGE. 23 (DEFENDANTS' EXHIBIT 2 WAS MARKED FOR 24 IDENTIFICATION.) 25 BY MR. POULOS:</p>	<p>1 HAVE TO PAY THAT DEBT TO DEL MAR? 2 A RIGHT. I DON'T RECALL HIM SAYING WHAT YOU JUST 3 SAID. 4 Q WELL, OR ANY WORDS TO THAT EFFECT? 5 A LIKE, I DON'T RECALL HIM SAYING ANYTHING HAVING 6 TO DO WITH HIS RESPONSIBILITIES TO DEL MAR, TO ME, 7 HAVING TO DO WITH WHAT YOU JUST SAID. 8 Q DID YOU SIT THROUGH YOUR FATHER'S DEPOSITION IN 9 THE AVILA BEACH CASE? 10 A YES. 11 Q AND DID HE SIT THROUGH YOURS? 12 A PREDOMINATELY, YES. 13 Q AND DID YOU AGREE -- WHEN YOU SAT THROUGH YOUR 14 FATHER'S DEPOSITION, DID YOU AGREE WITH HIS TESTIMONY? 15 A YES. 16 MR. POULOS: I DON'T HAVE ANYTHING FURTHER. 17 MR. WALSH: NO QUESTIONS FOR ME. THANK YOU 18 VERY MUCH FOR YOUR TIME, LEONARD. 19 THE WITNESS: SURE. 20 MR. POULOS: THANK YOU, LEONARD. 21 THE REPORTER: COULD I GET YOUR INFORMATION, 22 COUNSEL? 23 MR. WALSH: MY NAME IS JAMES WALSH, W-A-L-S-H, 24 AND I'M A PARTNER WITH DAVIS, WRIGHT, TREMAINE, LLP, 25 SUITE 800, 505 MONTGOMERY STREET, SAN FRANCISCO. AND I</p>

7 (Pages 22 to 25)



**CERTIFIED COPY**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

vs.

BARRY COHEN, et al.,'

Defendants.

AND RELATED COUNTERCLAIMS.

DEPOSITION OF MICHAEL COHEN  
SAN LUIS OBISPO, CALIFORNIA  
TUESDAY, JANUARY 8, 2008  
2:10 p.m. - 2:50 p.m.

Reported by Linda Turney, CSR #2435

MICHAEL COHEN

January 8, 2008

Page 2

Page 4

Deposition of MICHAEL COHEN

was taken at the offices of McDaniel Shorthand Reporters,  
1302 Osos Street, San Luis Obispo, California, before  
Linda Turney, RPR, CM, CSR #2435, a Certified Shorthand  
Reporter for the State of California, on Tuesday,  
January 8, 2008, commencing at the hour of 2:10 p.m.

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:

(APPEARING BY TELEPHONE)

COX, WOOTTON, GRIFFIN, HANSEN & POULOS LLP

BY: MAX L. KELLEY

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505 Montgomery Street

San Francisco, California 94111-6533

(415) 276-6500

MICHAEL COHEN

A defendant herein, having been first duly  
sworn, testified as follows:

EXAMINATION

BY MR. KELLEY:

Q. Could you please state your full name for the  
record?

A. Michael Allen Cohen.

Q. Michael, how old are you?

A. Twenty-nine.

Q. And who are you currently employed by?

A. Olde Port Fisheries, Incorporated.

~~Q. So if we say Olde Port Fisheries, Inc., that is  
the company that employs you?~~

A. Correct.

Q. That is a California corporation?

A. Sure.

~~Q. Are you a partner in that or a shareholder in  
that corporation?~~

~~A. I am not.~~

Q. All right. Who -- is that the corporation that  
is owned by your father?

A. Correct.

Q. Okay. And that is Barry Cohen, right?

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EXAMINATION

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A. Correct.

~~Q. Who is the other -- are there any other  
shareholders of that corporation?~~

~~A. The shareholder, I'm not sure how all that works  
out, I don't know what the paperwork says, or I don't  
know much about that.~~

~~Q. Okay. Is it your understanding that Christine  
Cohen is the other shareholder in the corporation?~~

~~A. I'm not sure about that. I don't know anything  
about that, really.~~

~~Q. You don't own any of the shares?~~

~~A. No.~~

Q. Have you ever had your deposition taken before?

A. I have.

Q. How many times?

A. Once.

Q. And was that in the Avila Beach litigation?

A. Yes.

Q. That was the litigation by Barry Cohen and Olde  
Port Fisheries, Inc., against the city of Avila Beach?

A. I believe it was the harbor district.

Q. The harbor district, again. Did you ever review  
that deposition transcript?

A. I did.

Q. Did you have to make any corrections to it or was

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<p>1 all of your testimony in that case true and correct?</p> <p>2 A. From what I remember, it was true and correct.</p> <p>3 Q. All right.</p> <p>4 A. It's been a while, but I'm pretty sure it's</p> <p>5 pretty true. It is what it is.</p> <p>6 Q. With respect to a deposition, you understand --</p> <p>7 the main thing I want you to understand is you are under</p> <p>8 oath and testifying as though you were in a court of law.</p> <p>9 You understand that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. What capacity are you currently employed by Olde</p> <p>12 Port Fisheries, Inc.?</p> <p>13 A. "Capacity" meaning full time?</p> <p>14 Q. Well, that's a starting place. Are you full</p> <p>15 time?</p> <p>16 A. I am.</p> <p>17 Q. What is your job title, if you have one?</p> <p>18 A. General manager.</p> <p>19 Q. How long have you been the general manager of</p> <p>20 Olde Port Fisheries, Inc.?</p> <p>21 A. I believe since 2004.</p> <p>22 Q. What are your responsibilities as a general</p> <p>23 manager?</p> <p>24 A. Well, I do many things. I purchase seafood. I</p> <p>25 sell seafood. I make sure employees are doing what they</p>	<p>1 places and when it was going to happen and stuff like</p> <p>2 that.</p> <p>3 Q. Have you talked to Leonard Cohen at all about</p> <p>4 your deposition or his?</p> <p>5 A. No.</p> <p>6 Q. And have you talked to Christine Cohen at all --</p> <p>7 A. No.</p> <p>8 Q. -- about your deposition?</p> <p>9 A. No.</p> <p>10 Q. Or hers?</p> <p>11 A. No.</p> <p>12 Q. How long have you been employed by Olde Port</p> <p>13 Fisheries, Inc.?</p> <p>14 A. I believe since 2004.</p> <p>15 Q. Before that were you employed by Del Mar?</p> <p>16 A. I got my checks from Del Mar but I worked under</p> <p>17 Barry.</p> <p>18 Q. Okay. During what time period did you receive</p> <p>19 checks from Del Mar?</p> <p>20 A. 2003, I believe, is around the time.</p> <p>21 Q. What were you doing for Del Mar that you received</p> <p>22 checks from Del Mar?</p> <p>23 A. I was working at the plant down there in Avila</p> <p>24 Beach processing the fish for -- with Olde Port.</p> <p>25 Q. When you say processing fish, I'm assuming you</p>
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<p>1 are supposed to be doing. Solve problems. I mean,</p> <p>2 basically, do what the business needs.</p> <p>3 Q. You are the top guy, is that right or is there</p> <p>4 someone else above you?</p> <p>5 A. Well, Barry is above me.</p> <p>6 Q. What does Barry do for Olde Port Fisheries, Inc.,</p> <p>7 on a daily basis, if anything?</p> <p>8 A. He does -- he works with the bookkeeper, handles</p> <p>9 accounts payables, accounts receivables, stuff like that.</p> <p>10 Q. By the way, is there anyone else present down</p> <p>11 there with you in the conference room?</p> <p>12 A. No.</p> <p>13 Q. What did you do to prepare for this deposition?</p> <p>14 Did you meet with anybody?</p> <p>15 A. No.</p> <p>16 Q. Have you discussed your deposition with Barry?</p> <p>17 A. Briefly. He just told me tell the truth. I</p> <p>18 mean, there's nothing really to prepare for.</p> <p>19 Q. Okay. When did you talk to him about your</p> <p>20 deposition?</p> <p>21 A. Well, I talked to him last night. He just was</p> <p>22 confirming the time and place and all that stuff. And</p> <p>23 he's just been telling me that I'm going to be deposed,</p> <p>24 and he was telling me when I was going to be deposed.</p> <p>25 Then it got canceled, and just basically about times and</p>	<p>1 weren't on the processing line.</p> <p>2 A. Oh, no, no. I was -- actually, I was when I</p> <p>3 first started, and then I moved into the retail part of</p> <p>4 it, and then I moved into management after that, but that</p> <p>5 was shortly before Del Mar left.</p> <p>6 Q. Was it your understanding that before 2004 you</p> <p>7 were working for Del Mar Seafoods through its Olde Port</p> <p>8 Fisheries Division?</p> <p>9 A. None of that was really clear to me. I never</p> <p>10 even questioned it. All I know is I was working for my</p> <p>11 dad, and I got my checks from Del Mar, and they were</p> <p>12 working together somehow. I never even thought about it.</p> <p>13 So I'm not even quite sure what that was all about.</p> <p>14 Q. Okay. What is the business of Olde Port</p> <p>15 Fisheries, Inc.?</p> <p>16 A. We do retail, we do some restaurant delivery, and</p> <p>17 that's about it.</p> <p>18 Q. The retail, where is that conducted out of?</p> <p>19 A. That's conducted out of -- at the end of the pier --</p> <p>20 in our building there.</p> <p>21 Q. And --</p> <p>22 A. And then we also do some Farmers markets in the</p> <p>23 area. And we do some little bit of business from our web</p> <p>24 site. That's about it.</p> <p>25 Q. What is the web site?</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 A. What do you mean?</p> <p>2 Q. What is the address?</p> <p>3 A. It's oldeportfish.com.</p> <p>4 Q. Is that with an E on the end of "olde"?</p> <p>5 A. Correct.</p> <p>6 Q. Was that the same kind of a retail business that</p> <p>7 was going on in 2004?</p> <p>8 A. Correct.</p> <p>9 Q. Did you start in management in early 2004?</p> <p>10 A. I don't remember if it was early 2004 or late</p> <p>11 2003.</p> <p>12 Q. For the retail end of things, when Olde Port</p> <p>13 Fisheries, Inc., was buying fish that it was going to sell</p> <p>14 at retail, who did it buy those fish from in 2003-2004?</p> <p>15 A. It sold fish from when we were processing it from</p> <p>16 the boats. And it sold fish from -- we bought some stuff</p> <p>17 from Pacific Seafoods, Faciola Meats, and possibly a</p> <p>18 couple wholesalers in LA. I'm not too sure what time we</p> <p>19 started doing that.</p> <p>20 Q. Was Del Mar a company that Olde Port Fisheries,</p> <p>21 Inc., bought fish from to sell retail?</p> <p>22 A. Yeah, a little bit. Are you talking before, like</p> <p>23 when Del Mar was working with Olde Port or when they left</p> <p>24 or when --</p> <p>25 Q. Let's look at each time period and maybe we can</p>	<p style="text-align: right;">Page 12</p> <p>1 say you asked for advances, who did you get those from?</p> <p>2 A. I talked to Barry about it.</p> <p>3 Q. Did that come from the Del Mar/Olde Port</p> <p>4 Fisheries Division?</p> <p>5 A. I thought it was coming from Barry.</p> <p>6 Q. Have you ever paid Barry back?</p> <p>7 A. No, I didn't pay him back. When I became the</p> <p>8 manager of Olde Port Fisheries, Incorporated, I pretty</p> <p>9 much gave the business, the web site, instead of paying</p> <p>10 him back.</p> <p>11 Q. Who did you give the web site to?</p> <p>12 A. Olde Port Fisheries, Incorporated.</p> <p>13 Q. To Barry?</p> <p>14 A. To the business, yeah.</p> <p>15 Q. Who did you get the inventory from when you</p> <p>16 started your restaurant distribution business?</p> <p>17 A. I bought it from Olde Port Fisheries, I believe.</p> <p>18 Q. Was that Olde Port Fisheries the division of Del</p> <p>19 Mar or Olde Port Fisheries, Incorporated?</p> <p>20 A. It was before Olde Port Fisheries was</p> <p>21 incorporated.</p> <p>22 Q. So it was from the Del Mar Seafoods/Olde Port</p> <p>23 Fisheries Division?</p> <p>24 A. It was, yeah, from Barry. I mean --</p> <p>25 Q. Barry was the manager of that division, right?</p>
<p style="text-align: right;">Page 11</p> <p>1 speed this up a little bit. Take a look at Exhibit 1,</p> <p>2 would you please?</p> <p>3 (Exhibit 1 marked for identification.)</p> <p>4 A. Okay. 39</p> <p>5 Q. And you see in the first column it says "Michael</p> <p>6 Cohen"?</p> <p>7 A. Yes.</p> <p>8 Q. Beginning balance of \$13,920.40. Do you see</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have an understanding of what that debt</p> <p>12 was from?</p> <p>13 A. I believe -- I know some of it. I don't remember</p> <p>14 13,000, but I remember some of it.</p> <p>15 Q. What do you remember of it?</p> <p>16 A. Well, I remember when I was working for Barry out</p> <p>17 there when they were working with Del Mar I needed some</p> <p>18 extra income, so I started a restaurant distribution just</p> <p>19 by myself, and I was purchasing from them, and after a</p> <p>20 while I asked to borrow some money for -- to build a web</p> <p>21 site against my payables, and I'm pretty sure that's where</p> <p>22 it came from. But I don't remember it being 13,000.</p> <p>23 Q. Whether you remember it being --</p> <p>24 A. I believe somewhere around like 6,000.</p> <p>25 Q. Did you ever pay that money back? Well, when you --</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I don't know. I thought he was the owner. But I</p> <p>2 didn't know -- I mean, like I said I never questioned what</p> <p>3 was going on. Barry is just, I mean, he's just my dad.</p> <p>4 I've always worked for him so I never questioned what he</p> <p>5 does.</p> <p>6 Q. So was this in 2003 that you started this</p> <p>7 restaurant distribution business?</p> <p>8 A. I believe so.</p> <p>9 Q. And what about the web site?</p> <p>10 A. I believe it was around the same time.</p> <p>11 Q. And did you understand that you had an obligation</p> <p>12 to pay that money back?</p> <p>13 A. Of course.</p> <p>14 Q. And have you ever paid that money back to Del</p> <p>15 Mar?</p> <p>16 A. No.</p> <p>17 Q. Have you ever paid that money back to the Del Mar</p> <p>18 Seafoods, Inc., Olde Port division?</p> <p>19 A. No.</p> <p>20 Q. Have you ever paid that money back to Barry?</p> <p>21 A. I gave his business the web site I built with it.</p> <p>22 Q. What about for the inventory, did you ever pay</p> <p>23 any of that back?</p> <p>24 A. Oh, of course.</p> <p>25 Q. When did you pay back the inventory?</p>



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1 A. As I bought it, I paid it back. I'd buy some,  
 2 I'd sell some, I'd pay, you know, just like a normal  
 3 business.  
 4 Q. Did Barry ever tell you that the debt was  
 5 forgiven?  
 6 A. He told me he would take care of it, because I  
 7 gave the business the web site.  
 8 Q. When did Barry tell you that he would take care  
 9 of that debt?  
 10 A. That I don't know for sure.  
 11 Q. Can you give me your best estimate?  
 12 A. I would say 2004. I mean, I don't remember for  
 13 sure.  
 14 Q. I should tell you that if you don't remember  
 15 something, that is a really good answer.  
 16 A. Correct.  
 17 Q. You're free to say you don't remember if that is  
 18 true. Okay?  
 19 A. Correct.  
 20 Q. I will sometimes come back and try and help you  
 21 remember dates and times if I have something that might  
 22 assist you in that, but I don't want you to guess or  
 23 speculate, okay?  
 24 A. Sure.  
 25 Q. All right. Why don't you take a quick look at

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1 time.  
 2 Q. How do you know that is his e-mail address?  
 3 A. Well, it used to be.  
 4 Q. Okay.  
 5 A. I don't know if it is today, but that is what it  
 6 used to be. I remember FishmanCohen@AOL.com.  
 7 Q. Okay. This case, well, in January of '07 a year  
 8 ago approximately now, January 30, do you remember your  
 9 dad being sick?  
 10 A. I do not.  
 11 Q. Do you remember him telling you that he was  
 12 agreeing to be responsible for those debts, for your debts  
 13 in order to make Olde Port better?  
 14 A. No.  
 15 Q. But do you remember him saying that he would take  
 16 care of it?  
 17 A. Correct.  
 18 Q. And after Barry told you that he would take care  
 19 of it, did Del Mar ever approach you to try and get  
 20 payment from you?  
 21 A. For the \$13,900?  
 22 Q. Yes.  
 23 A. No, I don't believe so.  
 24 Q. Could you take a look at Exhibit 2, please.  
 25 (Exhibit 2 marked for identification.)

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1 Exhibit 3, please. And take a minute to read it.  
 2 (Exhibit 3 marked for identification.)  
 3 A. Okay.  
 4 Q. Have you ever seen this before?  
 5 A. I have not.  
 6 Q. If you notice at the bottom it says January 30,  
 7 2007; do you see that?  
 8 A. Correct.  
 9 Q. And it refers to America Online Fisherman Cohen;  
 10 do you see that?  
 11 A. Yes.  
 12 Q. Do you recognize who Fisherman Cohen is?  
 13 A. Yes.  
 14 Q. Who is Fisherman Cohen?  
 15 A. That's Barry.  
 16 Q. That's his American Online address?  
 17 A. Yes.  
 18 Q. I'm sorry, it's "FishmanCohen."  
 19 A. I understand what you're saying.  
 20 Q. "FishmanCohen" is Barry's web address?  
 21 A. Correct.  
 22 Q. Do you get e-mails from him?  
 23 A. No.  
 24 Q. Okay. Do you send him e-mails?  
 25 A. No. We haven't e-mailed each other in a long

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1 Do you see up at the top it says "Michael Cohen"?  
 2 A. Yes.  
 3 Q. And then it shows a date of 3/18/04?  
 4 A. Yes.  
 5 Q. Invoice amount of \$14,353?  
 6 A. Yes.  
 7 Q. And then it shows a balance, looks like there was  
 8 some sort of payment or credit leaving that balance of  
 9 \$13,920.40, right?  
 10 A. Correct.  
 11 Q. Does this refresh your recollection as to an  
 12 invoice from -- if you notice up at the top it's Olde Port  
 13 Fisheries Division, meaning it's got to be from Del Mar  
 14 Seafoods/Olde Port Fisheries Division, does that ring a  
 15 bell now or refresh your recollection as to a debt that  
 16 you had to Del Mar Seafood/Olde Port Fisheries Division?  
 17 A. I remember having some debt. I mean I don't  
 18 remember having 13,000 debt. At certain points I did but  
 19 I always paid them. When I got paid, I always paid them.  
 20 So at this particular time I don't remember what that was,  
 21 you know, what that entailed or what was going on.  
 22 Q. Did your debts that you carried -- I take it the  
 23 way this business worked was that if you needed some fish  
 24 for either your restaurant supply business or your web  
 25 business or the retail business, you got that fish from

5 (Pages 14 to 17)



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<p>1 Barry?</p> <p>2 A. Correct.</p> <p>3 Q. And you're not sure where Barry got that fish</p> <p>4 from, whether he got it, you know, from Del Mar or from</p> <p>5 another fisherman or, you know, what; you just got your</p> <p>6 fish from Barry?</p> <p>7 A. Correct.</p> <p>8 Q. And then you expected Barry, whether it was as</p> <p>9 the Olde Port Fisheries Division or Olde Port Fisheries,</p> <p>10 Inc., basically kept a tab?</p> <p>11 A. Correct, I got involved.</p> <p>12 Q. And did those invoices, if you didn't pay them</p> <p>13 within a certain time, carry any interest rate on them?</p> <p>14 A. That I don't remember. I'm not sure.</p> <p>15 Q. Do you recall having a discussion with David</p> <p>16 Cantrell about this, the payment schedule shown on Exhibit</p> <p>17 1?</p> <p>18 A. I do not.</p> <p>19 Q. I don't have Mr. Cantrell's deposition with me,</p> <p>20 but my recollection is that he testified that he had a</p> <p>21 discussion with you about the debt listed under "Michael</p> <p>22 Cohen," and that you told him that Barry said he would</p> <p>23 take care of that debt.</p> <p>24 A. Okay. I don't remember that at all.</p> <p>25 Q. You do know who David Cantrell is?</p>	<p>1 in Avila Beach; is that right?</p> <p>2 A. Correct.</p> <p>3 Q. So you, your brother and your dad are all working</p> <p>4 together and you have these various businesses, right?</p> <p>5 A. Correct.</p> <p>6 Q. And Barry just -- if you needed fish you went to</p> <p>7 Barry, right?</p> <p>8 A. Correct.</p> <p>9 Q. And if your brother needed fish, he went to</p> <p>10 Barry, right?</p> <p>11 A. Correct.</p> <p>12 Q. And then Barry was -- would just take care of the</p> <p>13 accounting on his end of things; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. So there were books but you guys didn't pay a</p> <p>16 whole lot of attention to them; am I right about that?</p> <p>17 A. Correct. I paid a lot more attention after 2004</p> <p>18 or during 2004 and after.</p> <p>19 Q. Once you basically took over as the manager you</p> <p>20 started paying more attention?</p> <p>21 A. Correct.</p> <p>22 Q. But any debts that were incurred before that were</p> <p>23 debts that you basically thought Barry was going to take</p> <p>24 care of?</p> <p>25 A. Not at the time. But later, correct.</p>
Page 19	Page 21
<p>1 A. Of course.</p> <p>2 Q. And he is the bookkeeper for Olde Port Fisheries,</p> <p>3 Inc., right?</p> <p>4 A. He's the CPA.</p> <p>5 Q. CPA, okay.</p> <p>6 A. I don't remember it. We may have, but I don't</p> <p>7 remember it.</p> <p>8 Q. Do you have any relationship to Olde Port Inn?</p> <p>9 A. I do not. The only relationship I have to them</p> <p>10 is we sell them seafood.</p> <p>11 Q. Olde Port Inn is a business owned by your</p> <p>12 brother, isn't it?</p> <p>13 A. Correct.</p> <p>14 Q. And that's Leonard?</p> <p>15 A. Correct.</p> <p>16 Q. Did Leonard's business, Olde Port Inn, buy fish</p> <p>17 from Del Mar Seafoods, Inc., Olde Port Fisheries Division?</p> <p>18 A. I'm pretty sure -- well, they've always bought</p> <p>19 fish from us next door. I don't know -- I wasn't part of</p> <p>20 that. I would just give them the fish and whoever made</p> <p>21 the invoices did that.</p> <p>22 Q. Just so we can get a clear picture here, your</p> <p>23 business and the Olde Port Fisheries, Inc., business, the</p> <p>24 web site, the retail and the Olde Port Inn all operate on</p> <p>25 the same pier and, frankly, out of the same structure down</p>	<p>1 Q. Okay. And later when he said he would take care</p> <p>2 of them?</p> <p>3 A. Correct.</p> <p>4 Q. And did he tell the same thing to Leonard, that</p> <p>5 he would basically take care of those debts for Olde Port</p> <p>6 Inn?</p> <p>7 A. I have no idea.</p> <p>8 Q. Have you ever discussed that with Leonard?</p> <p>9 A. Well, let's see, I discussed at one point during</p> <p>10 the lawsuit that we were going to provide Leonard with</p> <p>11 seafood, like, I don't know, discounted rate or something</p> <p>12 to help with the lawsuit. I don't know the extent of that</p> <p>13 whole deal. But I talked to him briefly about something</p> <p>14 along the lines of we would help him, like extend him more</p> <p>15 credit time or something like this. I don't remember</p> <p>16 correctly.</p> <p>17 Q. Okay. You were a party to that lawsuit with the</p> <p>18 harbor district down there, weren't you?</p> <p>19 A. I was not.</p> <p>20 Q. Was that just Leonard?</p> <p>21 A. That was Leonard and Barry, I believe, only.</p> <p>22 Q. Okay. Do you ever have any discussions with your</p> <p>23 dad about maybe Olde Port Fisheries, Inc., declaring</p> <p>24 bankruptcy?</p> <p>25 A. No.</p>

DAVID ALAN KOBAK January 8, 2008

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

--oOo--

DEL MAR SEAFOODS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. C-07-2952-WHA
	)	
BARRY COHEN, CHRIS COHEN (aka	)	
CHRISTENE COHEN), in personam	)	
and, F/V POINT LOMA, Official	)	
Number 515298, a 1968	)	
steel-hulled, 126-gross ton,	)	
70.8 foot long fishing vessel,	)	
her engines, tackle, furniture	)	
apparel, etc., in rem, and	)	
Does 1-10,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF  
DAVID ALAN KOBAK

January 8, 2008

REPORTED BY: RITA R. LERNER, CSR #3179 (2001-404169)

DAVID ALAN KOBAK

January 8, 2008

<p style="text-align: right;">2</p> <p>1 INDEX OF EXAMINATIONS</p> <p>2 Page</p> <p>3 Examination by Mr. Poulos ..... 4</p> <p>4 Examination by Ms. Fanger ..... 75</p> <p>5 Further examination by Mr. Poulos ..... 81</p> <p>6</p> <p>7 EXHIBITS MARKED FOR IDENTIFICATION</p> <p>8 No. Description Page</p> <p>9 Exhibit 1 Document titled "Trips By The Month" . 20</p> <p>10 and attached Settlement Sheets, 43 pp.</p> <p>11 Exhibit 2 Color photograph, Bates No. DMSI 0066 ... 33</p> <p>12 Exhibit 3 Color photograph, Bates No. DMSI 0067 ... 42</p> <p>13 Exhibit 4 Color photograph, Bates No. DMSI 0068 ... 42</p> <p>14 Exhibit 5 Color photograph, Bates No. DMSI 0065 ... 44</p> <p>15 Exhibit 6 Document titled "Reportee" . 45</p> <p>16 Follow-up" (front and back side) on</p> <p>17 a single exhibit page</p> <p>18 Exhibit 7 Declaration of Dave Kobak, with black . 45</p> <p>19 and red ink annotations and</p> <p>20 interlineations, 4 pp. (includes back</p> <p>21 side of page 3)</p> <p>22 Exhibit 8 San Francisco Police Department . 50</p> <p>23 Incident Report, 3 pp.</p> <p>24 Exhibit 9 Declaration of Dave Kobak, with black . 57</p> <p>25 ink corrections and yellow</p> <p>highlighting, 3 pp.</p> <p>Exhibit 10 Witness's signature on a blank sheet 61</p> <p>of lined paper</p> <p>Exhibit 11 National Liquidators document titled . 61</p> <p>"Vessel Detailed Condition Report" and</p> <p>inventory list, Bates Nos. DMSI 0085</p> <p>through DMSI 0095, 11 pp. total</p>	<p style="text-align: right;">4</p> <p>1 SAN FRANCISCO, CALIFORNIA Tuesday, January 8, 2008</p> <p>2 10:02 a.m.</p> <p>3 --oOo--</p> <p>4 DAVID ALAN KOBAK</p> <p>5</p> <p>6 called as a witness, who, having been first duly sworn,</p> <p>7 was examined and testified as follows:</p> <p>8 EXAMINATION BY MR. POULOS</p> <p>9 MR. POULOS: Q. Let's start with your full</p> <p>10 name for the record, please.</p> <p>11 A. David Alan Kobak.</p> <p>12 Q. How do you spell Kobak?</p> <p>13 A. K-o-b-a-k, Alan, with one "l,"</p> <p>14 Q. Captain, have you ever had your deposition</p> <p>15 taken before?</p> <p>16 A. Well, this little thing up there at your</p> <p>17 office. I guess, was that a deposition where this</p> <p>18 report was filled out? No. This is a declaration, I</p> <p>19 guess, not a deposition. No, I never have.</p> <p>20 Q. You signed a declaration before?</p> <p>21 A. Yes.</p> <p>22 Q. But you've never sat in a room --</p> <p>23 A. No.</p> <p>24 Q. -- and had your testimony taken by a court</p> <p>25 reporter?</p>
<p style="text-align: right;">3</p> <p>1 --oOo--</p> <p>2 Deposition of DAVID ALAN KOBAK, taken by the</p> <p>3 Plaintiff, at 190 The Embarcadero, San Francisco,</p> <p>4 California 94105, commencing at 10:02 a.m., on</p> <p>5 January 8, 2008, before RITA R. LERNER, CSR, pursuant to</p> <p>6 Notice.</p> <p>7 --oOo--</p> <p>8 APPEARANCES</p> <p>9</p> <p>10 FOR THE PLAINTIFF:</p> <p>11 COX, WOOTTON, GRIFFIN, HANSEN &amp; POULOS, LLP</p> <p>12 190 The Embarcadero</p> <p>13 San Francisco, California 94105</p> <p>14 (415) 438-4600</p> <p>15 By: GREGORY W. POULOS, Attorney at Law</p> <p>16</p> <p>17 FOR THE DEFENDANTS and CLAIMANT:</p> <p>18 DAVIS WRIGHT TREMAINE LLP</p> <p>19 505 Montgomery Street, Suite 800</p> <p>20 San Francisco, California 94111-6533</p> <p>21 (415) 276-6567</p> <p>22 By: GWEN L. FANGER, Attorney at Law</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 A. No.</p> <p>2 Q. Let me go through, then, what this process is</p> <p>3 so that you can understand what we're doing today and</p> <p>4 some of the general ground rules that apply.</p> <p>5 Okay. The most important one is that you are</p> <p>6 testifying today just as though you were sitting in a</p> <p>7 courtroom with a judge and a jury. Do you understand</p> <p>8 that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Yes?</p> <p>11 A. Yes, uh-huh.</p> <p>12 Q. The second most important one is that you have</p> <p>13 to give me audible verbal responses, so nods of the</p> <p>14 head, or "uh-huh" or "huh-uh," that require the court</p> <p>15 reporter to interpret, she can't take down, so we need</p> <p>16 you to say "yes," "no," or a verbal response. Okay?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Excellent. Because it is as though you were</p> <p>19 testifying in court with a judge and a jury, it carries</p> <p>20 with it -- the testimony carries with it the same</p> <p>21 penalty of perjury, the same obligation to tell the</p> <p>22 truth that you would have if you were taking a stand in</p> <p>23 a courtroom. Do you understand that?</p> <p>24 A. I understand, yes.</p> <p>25 Q. I just want you to understand that I want</p>

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<p>6</p> <p>1 you even though we're here in my office, kind of a</p> <p>2 casual setting, I want you to really treat this with the</p> <p>3 solemnity that it is due as a court proceeding. Okay?</p> <p>4 A. Right.</p> <p>5 Q. Good. The court reporter -- there are ground</p> <p>6 rules, she can only take down one of us talking at a</p> <p>7 time, because she's typing furiously away, and if we</p> <p>8 both talk at once, it's very difficult for her. So if</p> <p>9 you'll let me finish my questions before you start to</p> <p>10 answer, that will help her and it will help me. Okay?</p> <p>11 A. Okay. I understand.</p> <p>12 Q. When we ask for your testimony, we are asking</p> <p>13 for what you know or remember or can give us a good</p> <p>14 estimate of, but we don't want you to guess or to</p> <p>15 speculate about things. If you don't know something,</p> <p>16 tell me you don't know.</p> <p>17 A. Okay.</p> <p>18 Q. I may delve into it a little bit more to see if</p> <p>19 I have some facts that might help refresh your</p> <p>20 recollection, or some documents that might help you</p> <p>21 remember things. But if you're just guessing, don't do</p> <p>22 that. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. The proceeding is not intended to be a long</p> <p>25 drawn-out affair or in any way an imposition on you. So</p>	<p>1 Fishing Vessel Point Loma?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Is that maintained on the vessel?</p> <p>4 A. Yes.</p> <p>5 Q. Is it currently on the vessel?</p> <p>6 A. Well, we better rephrase that, too. There's a</p> <p>7 copy of the fishing permit on the boat. That's all</p> <p>8 we're required to have. I'm sure Barry has the</p> <p>9 original.</p> <p>10 Q. Are you aware that the vessel is subject to a</p> <p>11 preferred ship mortgage?</p> <p>12 A. I guess. I'm not real aware of it. There was</p> <p>13 something there on his papers that were on the vessel</p> <p>14 when they arrested it -- mortgage with Del Mar.</p> <p>15 Q. Is there any posting of the preferred mortgage</p> <p>16 anywhere on the bridge of the vessel?</p> <p>17 A. No, sir.</p> <p>18 Q. Have you ever informed anyone supplying</p> <p>19 equipment to the vessel that the vessel is subject to a</p> <p>20 preferred ship mortgage?</p> <p>21 A. No.</p> <p>22 Q. The vessel, from time to time, obtains things</p> <p>23 known as "necessaries." That would be things necessary</p> <p>24 for the operation of the vessel, like fuel, different</p> <p>25 types of ship's equipment, perhaps fishing nets, bait,</p>
<p>7</p> <p>1 if you need to take a break at some time, let me know.</p> <p>2 Okay?</p> <p>3 A. Okay.</p> <p>4 Q. Are you currently employed?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And who are you employed by?</p> <p>7 A. By Barry Cohen and the Fishing Vessel Point</p> <p>8 Loma.</p> <p>9 Q. How long have you been employed by Barry Cohen</p> <p>10 and the Fishing Vessel Point Loma?</p> <p>11 A. Since April of 2006, the middle of April.</p> <p>12 Q. And in what capacity are you employed?</p> <p>13 A. I'm the skipper of the Fishing Vessel Point</p> <p>14 Loma.</p> <p>15 Q. What type of a license do you have to be the</p> <p>16 skipper or captain of the Point Loma?</p> <p>17 A. Just a regular fishing license. I don't need</p> <p>18 captain-type papers, anything like that, to do it.</p> <p>19 Q. Do you have any sort of a seaman's license?</p> <p>20 A. No, sir.</p> <p>21 Q. Have you received any training in terms of</p> <p>22 operating vessels?</p> <p>23 A. No, but I've been doing it most of my life.</p> <p>24 I've owned several vessels.</p> <p>25 Q. Are you familiar with a fishing permit for the</p>	<p>9</p> <p>1 vessel fishing supplies; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And as the captain of the vessel, from time to</p> <p>4 time you have been responsible for obtaining those</p> <p>5 necessities for the vessel; haven't you?</p> <p>6 A. Yes, sir.</p> <p>7 Q. When you have obtained those necessities, have</p> <p>8 you informed the supplier that the vessel was subject to</p> <p>9 a preferred ship mortgage?</p> <p>10 A. No, I never did anything about that part.</p> <p>11 Q. What was your fishing experience prior to April</p> <p>12 of 2006?</p> <p>13 A. I had a salmon boat for a year or so, and I've</p> <p>14 ran numerous vessels, and owned a drag boat before, a</p> <p>15 trawler. I've been doing this since 1972 or '3,</p> <p>16 somewhere in there.</p> <p>17 Q. In this time period that you've been the</p> <p>18 skipper of the Point Loma, have you had any other</p> <p>19 employment?</p> <p>20 A. No, sir.</p> <p>21 Q. So since April of 2006, your sole employment</p> <p>22 has been as skipper of the Point Loma?</p> <p>23 A. Yes.</p> <p>24 Q. As skipper of the Point Loma, how are you</p> <p>25 compensated?</p>

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<p style="text-align: right;">10</p> <p>1 A. We get a percentage of the net from the catch 2 after fuel and ice are taken out. 3 Q. What is your percentage as the captain? 4 A. 25 percent. 5 Q. Has that been the same throughout the period 6 that you've worked on the vessel? 7 A. Yes. 8 Q. So you take a percentage of the catch after 9 fuel and ice are taken out? 10 A. Yes, sir. 11 Q. When you say "percentage," are you telling me a 12 percentage of the gross sales or the net sales? 13 A. Well, it would be the net, after that. They 14 start out with the gross and then we subtract ice and 15 fuel from it, from that. 16 Q. So your percentage is 25 percent of the net 17 after deducting fuel and ice? 18 A. Yes, sir. 19 Q. And, then, are there other crew members on the 20 vessel? 21 A. There's two other crew members, yes. 22 Q. How are they compensated? 23 A. The same way. They both get twelve and a half 24 percent a piece. 25 Q. That adds up to 50 percent, in my poor</p>	<p style="text-align: right;">12</p> <p>1 that area, but I'm not sure. I don't rightly remember 2 exactly what it was, because I haven't seen it since I 3 moved the boat there. I'm not real sure. 4 Q. This is one of those areas where I'm 5 entitled -- if you don't remember specifically, you've 6 done a great job of telling me that. I am entitled to 7 your best estimate, if you have one. Again, don't 8 guess. Is it your -- 9 A. That would be a guess. 10 Q. Well, that was going to be a question. Is your 11 estimate that it's around 300, or do you have any basis 12 for that? 13 A. For some reason, that 3-something sticks in my 14 mind. I could call the dock and find it out. Other 15 than that, I'm not going to say. I would have to say I 16 don't really know, to tell you the truth. I might be 17 wrong. 18 Q. How big is that vessel? 19 A. Its total length from one end to the other is 20 76 foot. Its registered length is a different length: 21 70 feet maybe. They measure a different area. 22 Q. The vessel is typically docked at the Hyde 23 Street Pier? 24 A. Yes, sir. 25 Q. In the time you have served aboard the vessel</p>
<p style="text-align: right;">11</p> <p>1 mathematical estimation. 2 A. It's real close, yes. 3 Q. Who gets the other 50 percent? 4 A. Barry. It goes to Barry. 5 Q. There are other expenses to operate and 6 maintain that vessel besides the ice and the fish -- I'm 7 sorry -- the ice and the fuel; correct? 8 A. Yes, correct. 9 Q. What are those other typical expenses? 10 A. Well, there's breakdowns or things like that. 11 As you can see, the boat is not real well kept up, but 12 it's been that way when I got on it. 13 I take care of everything that maybe breaks 14 down or needs to be fixed as we go along. We got a new 15 marine toilet there a while back. Stuff like that -- 16 all that stuff is paid for out of the boat. 17 Q. So that Barry's responsible for all of the 18 maintenance of the vessel out of his 50 percent? 19 A. Yes. 20 Q. The vessel has to tie up when it's in port; 21 right? 22 A. Yes, sir. 23 Q. How much is the berthing fee for that vessel? 24 A. I don't rightly remember. I was thinking it 25 might be \$300 a month, but I'm not sure. Somewhere in</p>	<p style="text-align: right;">13</p> <p>1 since April of 2006, has it used any other dock? 2 A. When I first got on the vessel, it was at Del 3 Mar Seafoods in Moss Landing, and I worked there for -- 4 I don't remember exactly; I would have to look into 5 that, too. When they moved out of there, they took the 6 fishing operation up to Astoria, and they wanted me to 7 go back there. And I didn't want to, so I got a job at 8 Caito Tidal Fisheries and moved the boat back here. 9 Q. When, approximately, did you move the vessel 10 here to San Francisco? 11 A. I don't know the exact date. 12 Q. Do you have a month? 13 A. No, I really don't. It's just kind of a blank 14 spot. I don't remember. 15 Q. Was it in 2006 or '77? 16 A. 2007. 17 Q. 2007? Okay. So, sometime in 2007 the vessel 18 moved up to San Francisco to the Hyde Street Pier, and 19 it's been home-ported, basically, in San Francisco 20 since? 21 A. Yes, sir. 22 Q. What type of fishery does the Point Loma engage 23 in? 24 A. It's a trawl vessel. 25 Q. Trawl vessel for what fishery?</p>

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<p style="text-align: right;">14</p> <p>1 A. Well, when it's trawling, it's dragging a net 2 on the bottom, and we fish for deep water fish or 3 whatever we can fish. 4 Q. Generally, because it's a bottom trawler, then, 5 you're fishing for different species of groundfish? 6 A. Yes, sir. 7 Q. It's fair to say, then, that you engage in the 8 groundfish fishery? 9 A. Yes. 10 Q. That's a managed fishery; is it not? 11 A. Yes, it is. 12 Q. And that's managed by the Pacific Coast 13 Groundfish Fishery Management Plan? 14 A. Yes, that and the state and the fish plant that 15 I sell my fish to. They manage it to a point. They set 16 limits for me, too. <del>17 Q. What limits are applicable to, or were</del> <del>18 applicable, to the Point Loma in 2007?</del> 19 A. What limits? 20 Q. Yes. How does that -- in some respects you're 21 the expert sitting here to inform the court what you can <del>22 and do with the vessel in terms of its fishery.</del> 23 Q. Are there restrictions on when the vessel 24 fishes and how much it fishes and what types of fish it 25 catches, that sort of thing?</p>	<p style="text-align: right;">16</p> <p>1 January and February. Then for maybe six months they go 2 down on some things. Then they come back up at the end 3 of the year for the last two-month period on certain 4 fish. 5 Q. So is it true that the May and June fall 6 together as one permit period? 7 A. I guess if that's how it works out, yeah. 8 Q. And in July-August, you start up a new period? 9 A. Right. 10 Q. And is it true that generally, then, because 11 you're allowed a certain amount or quota of fish during 12 each period, that your catches tend to be higher at the 13 beginning of that period, and then towards the end, you 14 have to be careful that you don't catch too much and go 15 beyond your permit amount? 16 A. Well, there's two ways of looking at it. I'm 17 not really worried about catching these quotas so much, 18 especially deep water stuff. There are petrale sole 19 that are spawning right now that I'm after in 2006. 20 Then it changed in 2007. It was 70,000 pounds for the 21 last two months, December and January. Now it's 50,000 22 pounds. But I go fishing for those and try to get that 23 50,000 pounds, which is a \$1.10 a pound. The other 24 stuff -- I just go fishing, you know, and get what I 25 can. If it's getting close to one of the quotas, I have</p>
<p style="text-align: right;">15</p> <p>1 A. There's limits on the type of fish you catch 2 and where you can fish a lot of times. Different 3 depths -- you have to have different nets for different 4 depths sometimes for the inshore and offshore. There's 5 monthly quotas; there's limits set by the government, 6 and they change and they go by a two-month period. And 7 I'm not going to remember the exact figures right now 8 because the new stuff isn't out yet for this year. I 9 haven't seen it yet. 10 Like you can catch 40,000 pounds of one variety 11 in two months, then 10,000 pounds of some other variety 12 in two months. It's all listed on the big sheet that 13 they put out every year for you. <del>14 Q. Do you have that sheet for 2007?</del> 15 A. I don't have it with me. It's on the boat. 16 Q. Okay. On the boat, is there a list for 2007? <del>17 A. Yes, there is. Yes, sir.</del> 18 Q. Okay. Do you remember what the two-month 19 periods are? 20 A. Starting January-February, and you go on all 21 the way through the twelve months. 22 Q. So January-February is the first period? 23 A. Yes, sir. 24 Q. March-April is the second period? 25 A. Uh-huh. The limits are increased like in</p>	<p style="text-align: right;">17</p> <p>1 to watch it, but I very seldom get that close to all of 2 them. We just catch what we can and deliver it. 3 I'm not out to get -- some of the quotas are 4 fairly big enough to where you're not going to catch 5 them all, anyway. Plus the plants -- like I said 6 earlier, the plant doesn't want 100,000 pounds of 7 something; they want 10,000 pounds of it. You can bring 8 in 12, something like that, maybe, but you can't just go 9 crazy. They can only take so much. 10 Q. What was the quota like between 2006 and 2007? 11 Did the limit stay about the same? 12 A. They did stay about the same, except that the 13 petrale sole went from 70,000 down to 50,000 for the 14 first two months and the last two months of the period. 15 Q. So, January-December you're referring to? 16 A. November and December and then January and 17 February the next year. 18 Q. Okay. But the fish quotas that you were 19 allowed to take, say, in the time period of June to 20 August of 2006 were similar to what you were allowed to 21 take in June to August of 2007? 22 A. Oh, yeah. Everything stayed the same there 23 pretty much. It wouldn't have mattered too much. There 24 wasn't a lot of changes. 25 Q. What about in the price of fish? Did you</p>

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<p>18</p> <p>1 feel -- in your experience, was there much of a change 2 in the price of fish during that time? 3 A. We got just a teenie bit of a raise this last 4 year for 2007, but not a lot; just a few cents here and 5 there. 6 Q. If you had been -- the vessel was arrested on 7 June 7th of 2007 and was released on August 17th of 8 2007. Is that consistent with your recollection? 9 A. Yes. 10 Q. Had you been able to fish in that time period, 11 is it your feeling that you would have caught roughly 12 the same amount of fish that you had caught in 2006? 13 A. I imagine, yes. I don't know, though, for 14 sure, because up here there's different quotas and 15 stuff. But where I fish at, things change, so I 16 couldn't really go by anything there. 17 <del>She has the stuff, but I guess you probably</del> 18 <del>have seen it, too. But I have kept a very good track of</del> 19 <del>the weather all the time the boat was tied up, and I</del> 20 <del>figured out all the trips that I could have fished when</del> 21 <del>the weather was good or when the weather was bad, and I</del> 22 <del>came up with that we could have fished 13 trips. So I</del> 23 <del>took the last 13 trips prior to that and added them up</del> 24 <del>to a gross, and they come up to \$150,000. I've taken</del> 25 <del>the last 13 trips since we got the boat back and come up</del> </p>	<p>20</p> <p><del>1 in the preceding months before June than you do in that</del> <del>2 time period between June and August?</del> 3 A. I'd have to look back at my records to prove 4 any of this to let you know for sure. Fishing is pretty 5 much the same year-round for me, except you have some 6 glorious days like when we catch this petrale, and 7 sometimes when the dover are spawning, but I haven't run 8 across much of that recently. 9 Q. Let me show you what Barry Cohen has produced 10 to us. These are not yet Bates-numbered, but these were 11 handed to me at the deposition of David Cantrell 12 recently. We'll have this package marked as Exhibit 1. 13 (Whereupon, Exhibit 1 was 14 marked for identification.) <b>TRIAL</b> 15 MR. POULOS: Q. Taking a look at Exhibit <b>X-52</b> 16 can I see this for a second? Can you look on with him? 17 If you look at the period from June 2006 to 18 August of 2006, you see the gross catch listed there is 19 17,846.99; 27,572.37; and then 12,142.75. Do you see 20 that? 21 A. Yes. 22 Q. You see that that is a significant drop down 23 from the gross for the periods of March, April and May 24 of 2006; right? 25 A. Okay. </p>
<p>19</p> <p>1 with like \$140,000 that the boat would have grossed. 2 Q. So doing this again, you figured out you could 3 have fished 13 trips? 4 A. Yes. 5 Q. And you figured out that in that 13 trips, you 6 could have grossed how much? 7 A. Somewhere in that area. 8 Q. 140 to 160? 9 A. Sure. 10 Q. Okay. And by "gross," you mean gross sales 11 before deductions of fuel and ice? 12 A. Yes. 13 Q. And what did you -- how did you reach that 14 calculation? 15 A. I just added up all the grosses from the fish 16 in the 13 trips before and the 13 trips afterwards. 17 Q. So you looked at the 13 trips immediately 18 preceding the arrest of the vessel? 19 A. Uh-huh. 20 Q. Yes? 21 A. I did both: Before and after. 22 Q. Right. And then you looked at the 13 trips 23 after? 24 A. Yes. 25 Q. Okay. Do you historically have higher catches </p>	<p>21</p> <p>1 Q. Do you see that? 2 A. Uh-huh. 3 Q. Yes? 4 A. Yes. 5 Q. And you see that it's actually also much lower 6 than the catch totals for September, August -- or 7 September, October and November of 2006; right? 8 A. Yes. 9 Q. Do you have an explanation for why in the -- 10 well, first of all, do you know if these figures are 11 accurate? 12 A. I hope they are. I don't know for sure. If 13 you have records of them back here from these pink 14 things, I see something there -- whether or not those 15 are accurate, if that's where you got these, these 16 settlement sheets -- the totals. 17 Q. Let's assume, because these have been produced 18 by Barry Cohen, that they are accurate. Do you have an 19 explanation for why the catch was lower in 2006 for the 20 months of June, July and August? 21 A. Well, not really, no. Only a couple of things. 22 Sometimes you go fishing and you don't catch much; 23 sometimes you go fishing and you break down. I'd have 24 to look at all of my records, and they're not with me, 25 to see if I went out and tried real hard and didn't </p>

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<p style="text-align: right;">22</p> <p>1 catch anything, or if I broke down and I had to go in  2 early or something, or if the weather got bad and I had  3 to come back in early or something.  4 Q. In June, July or August, the weather is usually  5 not that bad; is it?  6 A. Well, you get some northwest wind. It's windy,  7 yeah.  8 Q. Is there some reason why -- well, me ask, what  9 records would you need to look at to determine whether  10 the time period of June, July and August of 2006 -- if  11 there had been any significant breakdown?  12 A. I've got all that stuff on a calendar, or I  13 keep a running notebook of all the trips I make and what  14 time I leave, what time I do my tows and what time I get  15 in, reasons why I would come in early or something.  16 It's kind of like the old saying. It's called  17 "fishing," but if it was catching, they would call it  18 "catching." I don't know about that part of it.  19 Sometimes you do not catch fish. I don't care  20 what's going on. You can't count on maintaining an  21 average of something, you know.  22 Q. You testified earlier that you believe that for  23 the time period of June, July and August of 2006, you  24 would have had similar catches for the time period of  25 June, July and August of 2007?</p>	<p style="text-align: right;">24</p> <p>1 A. What date?  2 Q. Well, this is dated June 4 of '07 as the  3 delivery date, but on the bottom it shows that total,  4 11,000. That's what you're looking for.  5 A. 6-04? Is that what you said?  6 Q. Yes.  7 A. 11,790?  8 Q. Yes. Can you take a look at that page and tell  9 me if that refreshes your recollection at all in terms  10 of how the fishing was going in June of 2007.  11 A. I would suppose -- this is probably a guess,  12 also -- that maybe they only wanted 10,000 pounds of  13 dover, to start with, and they did have 12,000, which  14 was a hair over that. I'm not sure how many tows I  15 made.  16 Q. What is the groundfish buyback?  17 A. Well, years back, they bought -- I don't  18 remember how many years ago -- the government bought  19 back a bunch of trawlers, but the stipulation was they  20 would buy these boats back and put them out of business  21 and take the permits; but the existing boats would have  22 to pay back this loan that they borrowed from the  23 government to put these people out of business. So it's  24 five percent, or whatever it is, they take off your  25 gross every delivery on the West Coast for every boat</p>
<p style="text-align: right;">23</p> <p>1 A. There's a possibility. Maybe not. I don't  2 know.  3 Q. It could have been more or it could have been  4 less?  5 A. It could have been either way; yes, sir.  6 Q. Do you see for June of 2007, Barry reported a  7 catch with a gross value of 11,790.84 for the first  8 trip. Do you see that?  9 A. Where is that?  10 Q. In 2007, June.  11 A. 11,000. Okay.  12 Q. Do you see that?  13 A. Uh-huh.  14 Q. Do you recall that trip and whether you had any  15 problems on that trip?  16 A. No, sir.  17 Q. Is that a fairly typical trip for you?  18 A. I don't really know. They come and go, as I  19 said.  20 Q. If you flip towards the back, it looks like  21 about eight pages in, on the bottom, it shows the total  22 of -- that total of 11,790.84. Flip all the way to the  23 back.  24 A. From the back?  25 Q. Yes, and then go eight pages in.</p>	<p style="text-align: right;">25</p> <p>1 that's left.  2 Q. Is the net after that, as well, then?  3 A. Yes. The fish plant takes that off.  4 Q. So when we talked about the compensation being  5 paid to you is the net of ice and fuel, it's also net of  6 the groundfish buyback?  7 A. Yes. The amount right here is always that,  8 with that taken out of it (indicating).  9 Q. Right. Who were the crew members that you had  10 on the vessel in June of 2007?  11 A. June of 2007? Probably -- I don't remember now  12 for sure. It could have been Guido and Gino. Pete  13 Kellogg and Gene Harding, I believe, but I could be  14 wrong.  15 Do you have a list there somewhere?  16 Q. Yes. There's a -- it looks like in May, Gene  17 and Peter?  18 A. Gene and Pete. That's the guys.  19 Q. Gene who?  20 A. Gene Harding and Pete Kellogg.  21 Q. Pete Kellogg. And the month before that, there  22 was a Gene and a Kenny.  23 A. Kenny is another guy who fills in for one of  24 the guys occasionally, if someone takes a trip off or  25 whatever.</p>

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<p>26</p> <p>1 Q. During the period that the vessel was under</p> <p>2 arrest, were you paid at all?</p> <p>3 A. Barry compensated us some, yes.</p> <p>4 Q. How much did Barry compensate you personally?</p> <p>5 A. He gave me checks for \$5,000.</p> <p>6 Q. Total?</p> <p>7 A. Total.</p> <p>8 Q. I just want to be clear on this. So, for the</p> <p>9 time period that the vessel was under arrest, from June</p> <p>10 7th to August 17th of 2007, Barry paid you a total of</p> <p>11 \$5,000 for that time period?</p> <p>12 A. Yes, sir.</p> <p>13 Q. How did he calculate that sum?</p> <p>14 A. He just sent us some money occasionally. He</p> <p>15 sent the crew men some money, too. They were sent to</p> <p>16 stay in a hotel, because they live on the boat. They're</p> <p>17 like vagrants, or whatever you want to call them. They</p> <p>18 wander around with the fisheries.</p> <p>19 Q. How much did Barry pay them?</p> <p>20 A. I think he gave them 2,000 a piece.</p> <p>21 Q. Total?</p> <p>22 A. Total.</p> <p>23 Q. When did he pay that money to you?</p> <p>24 A. Just sent me a check occasionally.</p> <p>25 Q. Was it during that time period that the vessel</p>	<p>28</p> <p>1 pending.</p> <p>2 Occasionally, we'll put things on the record</p> <p>3 for a judge to rule on later. Unless for some reason</p> <p>4 you're instructed not to answer a question, you don't</p> <p>5 have to worry too much about that.</p> <p>6 Let's talk about when the vessel was arrested.</p> <p>7 At the time of the arrest, the vessel was at the Hyde</p> <p>8 Street Pier, correct?</p> <p>9 A. Yes, sir. Right where you boarded it</p> <p>10 yesterday.</p> <p>11 Q. The vessel -- at the time of the arrest, you</p> <p>12 were not on board the vessel; is that right?</p> <p>13 A. Not at all.</p> <p>14 Q. No, you were not on board the vessel?</p> <p>15 A. No, I wasn't. If you want to know more, I came</p> <p>16 to the boat that day, though, and left some groceries.</p> <p>17 I left and came back later.</p> <p>18 Q. Right. I'll get to that later. At the time of</p> <p>19 the vessel's arrest, there was a fishing net on board</p> <p>20 the vessel; correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What type of a fishing net was that?</p> <p>23 A. It's a big four-seam 120-foot footrope. I</p> <p>24 can't think of the name of it now. 15-inch (inaudible</p> <p>25 word) footrope on it. It's a big net.</p>
<p>27</p> <p>1 was under arrest, or did he send it to you later?</p> <p>2 A. No. During that time period. That goes back</p> <p>3 to where we had a problem with trying to get my stuff</p> <p>4 off the boat. One of your attorneys here said to make</p> <p>5 it simple handwritten, barely descriptive or whatever.</p> <p>6 I didn't realize I had to go to her and have her print</p> <p>7 something out for me.</p> <p>8 I just said, dirty clothes in a hamper. I</p> <p>9 don't know what more you'd need to know. Red-striped</p> <p>10 socks. The boat doesn't own any of that stuff; it's our</p> <p>11 stuff.</p> <p>12 I could have went somewhere else, but the guys</p> <p>13 had a sack or little bag of dirty clothes. They went to</p> <p>14 a laundromat to wash their clothes that day, and they</p> <p>15 came back to the boat and it was locked up. I didn't</p> <p>16 see them. That's all they had with them. All of their</p> <p>17 stuff, their fishing licenses; one of them had a</p> <p>18 passport. Just their personal stuff is on that vessel.</p> <p>19 locked up, and they can't get to it.</p> <p>20 They had no fishing license. They could have</p> <p>21 got a copy, if they had to, or they could have gone to</p> <p>22 the secondhand store somewhere and got some clothing and</p> <p>23 some rain gear, but it was kind of a bad situation for</p> <p>24 all of us at the time.</p> <p>25 Q. Move to strike as nonresponsive. No question</p>	<p>29</p> <p>1 Q. And that's used for fishing where it's over 150</p> <p>2 fathoms or something?</p> <p>3 A. Yes, sir.</p> <p>4 Q. So it's fishing in the EEZ, the Exclusive</p> <p>5 Economic Zone?</p> <p>6 A. I guess.</p> <p>7 Q. Is that more than three miles offshore?</p> <p>8 A. Well, you've got to be outside of 150 fathoms,</p> <p>9 whether it's three miles or 20 miles.</p> <p>10 Q. Where does the vessel generally fish?</p> <p>11 A. I usually fish off of Pigeon Point a lot, and</p> <p>12 sometimes down to Point Sur. Back and forth in those</p> <p>13 areas.</p> <p>14 Q. And how far out?</p> <p>15 A. Point Sur, I fish right in to three and a half</p> <p>16 miles out to 15 miles. Up here, I fish mostly 20 miles</p> <p>17 offshore when I've got that net, that big net.</p> <p>18 Q. Generally speaking, you're more than three</p> <p>19 miles offshore?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And less than 200 miles offshore; right?</p> <p>22 A. Yes.</p> <p>23 Q. How frequently in 2007, before the vessel was</p> <p>24 arrested, did the vessel fish inside of three miles?</p> <p>25 A. Actually, I hadn't done any fishing inside of</p>

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<p style="text-align: right;">30</p> <p>1 three miles, but I was getting ready to when the vessel  2 was arrested. The net was tied up on the deck, stacked  3 up so I could pick it up and get it off the boat and put  4 the other net back on. We were going to go make a trip  5 the next day or two after the vessel was arrested,  6 whenever the weather was good.</p> <p><del>7 Q. So in the time period of the arrest, the big</del>  <del>8 net was on the deck of the vessel, ready to be</del>  <del>9 off-loaded?</del></p> <p>10 A. Yes, sir.</p> <p>11 Q. So it was off the spool?</p> <p><del>12 A. Yes.</del></p> <p>13 Q. There was another, smaller net that you would  14 use for fishing inside of three miles or in the  15 shallower water?</p> <p>16 A. Well, that other net is what they call a  17 "selective flatfish trawl," and if you fish inside of  18 100 fathoms, it has to have an 8-inch roller thing on  19 the footrope. You have to have that net to fish inside  20 of 100 fathoms. 150, actually, but the RCA covers from  21 150 in to 100, so you can't fish there anyway. But I  22 can fish from the three-mile line to the 100-fathom  23 curve with that small net. I can use that small net  24 outside when I know I'm fishing for petrale. That's one  25 of the reasons we got the net. I got 70,000 pounds of</p>	<p style="text-align: right;">32</p> <p><del>1 to get you the exact dates, if you need them.</del></p> <p>2 Q. Okay. Where was the smaller net when the  3 vessel was arrested?</p> <p>4 A. It was on Pier 45, and there's a reason for  5 this. I'll have to tell you it's going to be a little  6 long.</p> <p>7 The boat's big, as you notice, and the net that  8 I have on the boat is huge. To get that net off, I have  9 to lift it with a hook line, a hook line where the rope  10 is. I have to lift it up into the air, put the rope  11 under that, and take my truck there and pull it off on  12 Pier 45. And there's only one spot I can do that. The  13 hoist on Pier 45 will not lift that net, and it's too  14 big to put in my truck; it's huge. So I put one on  15 there and take the other one off in that same area like  16 that between the two buildings on that side of Pier 45  17 there.</p> <p>18 Q. Okay. Pier 45 is not where the Point Loma was  19 berthed at the time of the arrest?</p> <p>20 A. No, it's just right across from it, though.</p> <p>21 Q. It's across the water?</p> <p>22 A. That's right. Across the bay there, the water.</p> <p>23 Q. Right. So the smaller fishing net was on a  24 dock across the water from where the Point Loma was  25 berthed?</p>
<p style="text-align: right;">31</p> <p>1 petrale with that new net when we first got it.</p> <p>2 Q. When did you get that net?</p> <p>3 A. That's a date I don't know, either. We got it  4 October, probably, of 2007, I would guess.</p> <p>5 Q. So the net that was --</p> <p>6 A. No. Actually, it was 2006; wasn't it?</p> <p>7 Q. Okay.</p> <p>8 A. Yeah.</p> <p>9 Q. So how many times had you fished with this  10 smaller net before the vessel was arrested?</p> <p>11 A. I used it for most of November and most of  12 December, and I took it off somewhere in there, but I'm  13 not real sure what dates. I have all that stuff on the  14 boat. I didn't realize I needed it; otherwise, I would  15 have brought it. So I don't know. Sorry.</p> <p>16 Q. Where was -- the smaller net is the one that  17 has been alleged went missing at some time around the  18 time of the arrest?</p> <p>19 A. Yes.</p> <p>20 Q. So if we refer to that as the smaller net,  21 you'll understand what I'm referring to?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So that smaller net you think was purchased or  24 obtained sometime in around October of '06?</p> <p>25 A. Somewhere in that area. I'd have to look it up</p>	<p style="text-align: right;">33</p> <p>1 A. Yes, sir.</p> <p>2 Q. The Hyde Street Pier is essentially -- is that  3 like Pier 49, then?</p> <p>4 A. I don't know. Hyde Street Pier -- that's where  5 the old boats are there. But the fish dock -- I don't  6 know. The Hyde Street Pier is where the commercial  7 fishing vessels dock down.</p> <p>8 MR. POULOS: Let me have marked as Exhibit 2  9 this photograph.</p> <p>10 (Whereupon, Exhibit 2 was  11 marked for identification.)</p> <p>12 MR. POULOS: Q. Exhibit 2 has Bates number  13 DMSI-00066. That's the number in the lower right-hand  14 corner, for your reference. This photograph shows the  15 Point Loma; correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And it shows it tied up at the Hyde Street  18 Pier; is that correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And in the distance, behind the vessel, across  21 the water there is Pier 45; is that right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So the net, the smaller net, was not even at  24 the same pier structure as the Point Loma?</p> <p>25 A. No.</p>

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<p style="text-align: right;">38</p> <p><del>1 anything, actually ultimately was not returned to you?</del></p> <p>2 A. I had guns on the boat, but those came back to</p> <p>3 me. But there was a pair of binoculars upstairs, pretty</p> <p>4 nice binoculars, which we never did find. I had to buy</p> <p>5 a new pair, because we had to have binoculars.</p> <p>6 Q. How much were the binoculars?</p> <p>7 A. It's in there, right there.</p> <p>8 Q. In the declaration?</p> <p>9 A. Yes. I wrote the price down there somewhere.</p> <p>10 Q. You handed me a declaration, and then on this</p> <p>11 declaration -- looks like it's original with your</p> <p>12 signature?</p> <p>13 A. It was, yes.</p> <p>14 Q. And then you have a bunch of handwritten notes</p> <p>15 on it.</p> <p>16 A. I just wrote down some stuff that came to mind</p> <p>17 as I'm reading it and thinking about coming here.</p> <p>18 Q. When did you make these notes?</p> <p>19 A. I made some today, in fact, on the back there.</p> <p>20 Q. The ones in red on the back?</p> <p>21 A. Uh-huh.</p> <p>22 Q. What about the interlineations on the</p> <p>23 declaration itself?</p> <p>24 A. That's something I put on it immediately when I</p> <p>25 got back, because whoever wrote it out there -- it says</p>	<p style="text-align: right;">40</p> <p><del>1 I went down many trails trying to find that net</del></p> <p>2 and I spent a lot of time doing it. I've been to part</p> <p>3 of Bodega Bay and wandered around other places, looking,</p> <p>4 and right up here, Pier 26, looking around in places,</p> <p>5 and I've never seen hide nor hair of it. Nobody knows</p> <p>6 anything about it. I've talked to everybody out on the</p> <p>7 dock out there at one time or the other. I got little</p> <p>8 leads here and there and I pulled them out, but none of</p> <p>9 them helped me.</p> <p>10 Q. How would you describe the condition of the</p> <p>11 Point Loma now?</p> <p>12 A. What do you think? It's a mess. It's been</p> <p>13 that way since I've been on it. It's too much for me to</p> <p>14 want to fix up. If it was my boat, I might have</p> <p>15 attacked it, but you can't expect me to get my crew to</p> <p>16 do that kind of work on that boat five or six days a</p> <p>17 week just to get it cleaned up. It would take a long</p> <p>18 time. It's sad that it's gotten in that shape.</p> <p>19 Q. Would you agree with me that it is in an</p> <p>20 advanced state of deterioration?</p> <p>21 A. Pretty much so, yes, sir. It still works -- is</p> <p>22 what my comment would be. It still works and everything</p> <p>23 works on it, and it's productive when we go fishing.</p> <p>24 Q. Is it true that there is no routine</p> <p>25 maintenance, but if something breaks, you fix it?</p>
<p style="text-align: right;">39</p> <p><del>1 8-foot or 8-inch or something -- didn't get it quite</del></p> <p>2 straight. I added little comments where it's in writing</p> <p>3 of what it should be.</p> <p>4 Q. Who owns the area where you were storing the</p> <p>5 smaller net?</p> <p>6 A. The harbor.</p> <p>7 Q. And who had given you permission to store it</p> <p>8 over there?</p> <p>9 A. Hedley Prince, the harbor master there, which I</p> <p>10 found out later he shouldn't have, I guess. But I tried</p> <p>11 to talk to a lady called "Claudia Davison," and she got</p> <p>12 mad at me, wasn't very nice at all; wasn't receptive to</p> <p>13 the fact that it is a working fishing dock and that's a</p> <p>14 fishing vessel. And like I said, you can't take the net</p> <p>15 off anywhere else unless you hire a crane and put it on</p> <p>16 a flatbed truck. I'm not equipped to do all that stuff.</p> <p>17 I don't want to go that far. But he said it was all</p> <p>18 right if I set it there.</p> <p>19 Q. You don't have any reason to believe that</p> <p>20 Del Mar took the smaller fishing net, do you?</p> <p>21 A. It could have been just anybody, couldn't it?</p> <p>22 Q. You don't know?</p> <p>23 A. Do you believe that Joe Cappuccio would come up</p> <p>24 and take his net that he thought was his? What do you</p> <p>25 think?</p>	<p style="text-align: right;">41</p> <p>1 A. We do a certain amount of routine maintenance</p> <p>2 to keep stuff from falling apart, to a point. Like the</p> <p>3 rust you see and the damage that has already been done,</p> <p>4 and there's not much you can do about a lot of it. You</p> <p>5 work around it, and if stuff breaks, you have to fix it.</p> <p>6 Q. I noticed on the port's railing near the stern,</p> <p>7 there's a major chunk of metal missing from the railing</p> <p>8 area there.</p> <p>9 A. Yeah.</p> <p>10 Q. Is that pretty symptomatic of the condition of</p> <p>11 the vessel overall?</p> <p>12 A. I hope it's not that way everywhere, like the</p> <p>13 part under the water.</p> <p>14 Q. Right. It floats?</p> <p>15 A. It floats, yes. Haven't had any problems</p> <p>16 anywhere, but we keep our survival suits or life jackets</p> <p>17 available.</p> <p><del>18 Q. Let's take a break for just a few seconds so I</del></p> <p>19 can go ahead and make copies of these and attach them to</p> <p>20 the record.</p> <p>21 MS. FANGER: I haven't seen those yet. Can I</p> <p>22 take a look at these?</p> <p>23 MR. POULOS: Sure. While we're doing that,</p> <p>24 let's just jump ahead a minute. We'll mark that, then,</p> <p>25 as Exhibit 3.</p>

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<p style="text-align: right;">42</p> <p>1 (Whereupon, Exhibit 3 was 2 marked for identification.) 3 THE WITNESS: The vessel has been that way for 4 a long, long time, you know. <b>TRIAL</b> 5 MR. POULOS: Q. This photograph, Exhibit 12 6 that shows the area on the railing that we were just 7 discussing where major rust has eaten through the metal; 8 correct? 9 A. Yes, sir. 10 Q. And that's been like that for a long time; 11 right? 12 A. It doesn't happen overnight. It was like that 13 when I got on the boat, sir. Not a whole lot I can do 14 about it. 15 Q. Right. 16 Let me just have marked as Exhibit 4 another 17 photograph. 18 (Whereupon, Exhibit 4 was 19 marked for identification.) 20 MR. POULOS: Q. Does Exhibit 4 show the 21 general condition of the Point Loma? 22 A. From what you can see of it there, yes. 23 Q. The net sitting on that, on the deck there -- 24 that's the larger fishing net? 25 A. That would be the large net; yes, sir.</p> <p style="text-align: right;">43</p> <p>1 Q. Then the spool is what's right behind that, 2 that it normally would roll on? 3 A. The net rail, yes. 4 Q. Does this appear to you to be the Point Loma at 5 the time that the vessel was arrested with the big net 6 on the deck? 7 A. It would look like that at that time. Yes, 8 that's where the net was when the boat was towed away. 9 Q. It's my understanding this photograph was taken 10 at the time of the arrest? 11 A. Okay. 12 Q. And, generally, what you see here is, then, 13 consistent with that? 14 A. Yes, sir. 15 Q. Okay. Again, showing in the background there 16 is the Pier 45 across the water, where the net was 17 stored? 18 A. Right. 19 Q. Could you tell me about your discussions with 20 anyone about loading that smaller net on the vessel 21 after the vessel was arrested? 22 A. I didn't discuss it with anybody, because I 23 couldn't. I just left it there, you know. I didn't 24 know how long this was going to take. Like I say, the 25 guy never served us with papers, to start with, until we</p>	<p style="text-align: right;">44</p> <p>1 knew what was going on. It took a while to get anything 2 going, to find out what's happening. Then, finally, 3 they towed the boat away, so I couldn't do anything with 4 the net. 5 Nets are so big, even that small net, that it's 6 almost too big to put in your pickup and drive it 7 around. It takes a lift truck to lift it. There's a 8 hoist over there that's not strong enough. They're 9 pretty funny around that area down there. They don't 10 like fishermen, I guess, very much, because they don't 11 provide you with much. 12 MR. POULOS: Let's mark another photograph. I 13 guess we're up to 5. 14 (Whereupon, Exhibit 5 was 15 marked for identification.) <b>TRIAL</b> 16 MR. POULOS: Q. Does Exhibit 5 show the Point 17 Loma taken from the starboard side? 18 A. Yes, sir. 19 Q. Let's take that break so I can mark these 20 other -- 21 MS. FANGER: Actually, I have some follow-up 22 questions on this. Want me to ask them now? 23 MR. POULOS: No. You can ask them at the end. 24 MS. FANGER: Okay. Well, actually, I think we 25 have to disclose these to you separately in the</p> <p style="text-align: right;">45</p> <p>1 deposition. 2 MR. POULOS: Well, you can do a disclosure of 3 them, but I'm still going to mark them and attach them 4 as an exhibit. 5 MS. FANGER: But you didn't ask for documents 6 for this deposition. 7 MR. POULOS: He's reviewed them and brought 8 them with him, so they are clearly something 9 discoverable. 10 MS. FANGER: Then I'll have questions. 11 MR. POULOS: Sure. Absolutely. Let's take a 12 ten-minute break. 13 THE WITNESS: Okay. 14 (Recess from 10:58 to 11:13 a.m.) 15 MR. POULOS: Let's mark this as Exhibit 6 and 16 this as Exhibit 7. 17 (Whereupon, Exhibits 6 and 7 were 18 marked for identification.) 19 MR. POULOS: Q. Could you take a look at 20 Exhibit 6, please, and can you tell us -- that's one 21 page behind there -- 22 A. Uh-huh. 23 Q. That's a true and correct copy of the page that 24 you were given by the harbor police when you made your 25 report --</p>
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<p style="text-align: right;">62</p> <p>2 Q. Is it your understanding that they did an 2 inventory of the vessel at the time? 3 A. I knew nothing of any of this situation 4 whatsoever. 5 Q. Let's go through this. I'll represent to you 6 this is a copy of their survey that they did. At the 7 time that they arrested the vessel, they prepared -- 8 they did a brief survey of the vessel and an inventory. 9 Do you see on the first page where it says 10 "Hull", "Hull Condition Starboard"? 11 A. Okay. 12 Q. It's got box number 1 checked? 13 A. Right. 14 Q. Above that it says, "General Hull Condition: 15 Extremely poor"? 16 A. Yes. 17 Q. Then above that, it has condition codes. 5 is 18 excellent; 4, above average; 3 is average; 2 is below 19 average, and 1 is salvage. 20 Do you see that? 21 A. I see that. 22 Q. First of all, it says, "General Hull Condition: 23 Extremely poor." Do you agree with that? 24 A. Yes, sir. 25 Q. "Hull Condition Starboard." Box 1 is checked.</p>	<p style="text-align: right;">64</p> <p>1 the last time the engine had major work done on it? 2 A. It hasn't since I've been on it. I've changed 3 the oil about every 5- or 600 hours. 4 Q. Do you agree with the description that the 5 motor looked very old and tired, that there is lots of 6 oil leaking out into the bilge, and it doesn't look like 7 the motor has been properly maintained? 8 A. It looks fine. There's a little seepage of oil 9 that you can't fix hardly -- like all diesel engines you 10 have on old boats. 11 Q. Do you agree with this general description? 12 A. Not necessarily, because I take good care of 13 the engine. That's what gets me in and out, and it does 14 run fine. 15 Q. When was the last time that vessel was 16 drydocked, if you know? 17 A. I really don't know. I mentioned that to Barry 18 the other day, and he didn't tell me any different, so I 19 don't know. 20 Q. In terms of the cabin, box 1 is checked for the 21 general condition. Do you agree with that? 22 A. Well, it's not the best. It could be a little 23 bit better than 1, I believe. 24 Q. Not much? 25 A. Not too much, no.</p>
<p style="text-align: right;">63</p> <p>1 Do you agree with that? 2 A. I guess, from what you can see above the water. 3 That's all I can go by. 4 Q. For hull condition on the port, box 1 is 5 checked. Do you agree with that? 6 A. Yes. 7 Q. "Deck Condition," box 1 is checked. Do you 8 agree with that? 9 A. Yes. 10 Q. "Bottom Condition." Nothing is checked. Then 11 it says, "The waterline does not have much growth, but 12 we were unable to see the very bottom." 13 You would agree with that? 14 A. Yes. 15 Q. Under "Engine," the "Engine Condition" says 16 that it is -- box 2 is checked for below average. Would 17 you agree with that? 18 A. Which engine is that? 19 Q. It looks like it's a CAT Model 3412. I assume 20 that's the main engine. 21 A. Box 3. 22 Q. Actually, I think the boxes are to the left of 23 the number. 24 A. I see. Okay. The engine runs fine, you know. 25 Q. In terms of its maintenance, is it -- when was</p>	<p style="text-align: right;">65</p> <p>1 You saw it. In fact, I remember your comment 2 when you got on it. You looked at the hatch and you 3 said something about "That looks like the only good 4 piece of metal on the boat." Had you not said that you 5 were an attorney, I would have laid some comment on you 6 right then about that. 7 Excuse me. You were probably right. I'm 8 sorry. 9 Q. I didn't think you were within hearing distance 10 at the time. 11 Just for the record, we had an inspection of 12 the vessel yesterday by Ken Moore, and I went out to 13 observe the vessel during that inspection, and that's 14 what the witness is referring to. 15 Could you look at the equipment listing on page 16 4 of 7. Just go through this. You don't need to say it 17 out loud, but if there is something you disagree with 18 that they reported here, could you just let us know. It 19 might speed things up. 20 Do the same thing just going through the 21 following pages. If you read it over and there's 22 something missing or incorrect, please tell me. 23 A. I don't know about this electric anchor winch. 24 They have it marked in the "P," which is "Present." 25 There is no electric anchor winch.</p>

17 (Pages 62 to 65)

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~~1 It looks okay on the equipment, except for the  
2 batteries. I imagine they were burnt up. Well, they  
3 were good when they got on the boat, but this is taken  
4 immediately at the time they stepped on the vessel.~~

~~5 When I went back there a week later or so,  
6 Myles asked me if I could get him some water for the  
7 battery. It had been boiling the water out of it or  
8 something. A 12-volt battery to run the electronics.  
9 He went ahead and turned it up, gave it some juice. It  
10 melted the wire -- the end of it.~~

~~11 I was kind of wondering why all my stuff on the  
12 vessel was disturbed. Now I see why on their list of  
13 inventory. They had to dig through everything to find  
14 out what was there -- the personal stuff.~~

~~15 Q. Right.~~

~~16 A. I don't see anything where it says anything  
17 about a pair of binoculars, though, here. Maybe I  
18 missed it. I don't see anything about my guns so far.  
19 I think the marshals took them, then, didn't they,  
20 maybe?~~

~~21 Q. Okay. Anything else?~~

~~22 A. Not that I know of. As I say, I got my guns  
23 back after I had to make a second trip over to Richmond  
24 to get them from Sugar Dock.~~

~~25 Q. How much were the binoculars you purchased?~~

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~~1 A. Whatever I wrote down. Did I write it down on  
2 this thing? I forget. In that declaration that I  
3 filled out, does it say something about them in there?  
4 I think I penciled in a price, maybe. I don't remember.~~

~~5 Not that one (pointing to an exhibit).~~

~~6 Q. I don't see it.~~

~~7 A. Anyway, I paid 200 some dollars for them. I'm~~

~~8 not sure exactly.~~

~~9 Q. Did you submit a bill for that to Barry?~~

~~10 A. I sent it to him, yes.~~

~~11 Q. Did he pay you back?~~

~~12 A. I believe so, yes.~~

~~13 Q. You testified at the beginning of the  
14 deposition that you looked at the 13 fishing trips  
15 before and after, and you estimated that you could have  
16 had a gross of 140 to 160 -- \$140,000 to \$160,000 in  
17 that time period for 13 trips?~~

~~18 A. Yes. That's what we had to go on -- is all,  
19 you know.~~

~~20 Q. Now, that is before fuel and ice, right?~~

~~21 A. That gross is before fuel and ice, but I also  
22 added up all the fuel and ice that was used in those  
23 periods and subtracted that from the figure.~~

~~24 Q. What did you come up with then?~~

~~25 A. I don't know if I have it with me. Here we go.~~

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~~1 again. You have the one from the first trips prior  
2 to --~~

~~3 Q. Okay. Okay. I see on the back you used 32,000  
4 worth of fuel and 5,880 worth of ice on one estimate,  
5 and 26,771.95 in fuel and 6,180 for ice on the other.~~

~~6 A. Right. That would be it, but I got -- you have  
7 some of those papers from the fish plant that showed how  
8 much we made. I gave him the ice tickets and I gave him  
9 the fuel tickets for all those months' trips, for the 13  
10 prior. I didn't do it with the ones afterwards, but I  
11 can.~~

~~12 Q. So, when did you give them that documentation?~~

~~13 A. I went back to the office one time and gave it  
14 to them. I don't remember exactly when it was. I  
15 talked to Barry and I told him I could do it as easy as  
16 he could, whatever it was, so I dug them out, took them  
17 down there. They should have them in their office.~~

~~18 Q. How far back did you go?~~

~~19 A. Just 13 trips, and the same way coming this  
20 way.~~

~~21 Q. Has anybody told you that Barry was asked to  
22 produce several years' worth of fish tickets and vessel  
23 records?~~

~~24 A. No, never heard that.~~

~~25 Q. Nobody had approached you to provide that~~

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~~1 documentation?~~

~~2 A. No, huh-uh.~~

~~3 Q. Did Barry ever discuss with you anything about  
4 payments that he made on a promissory note to Del Mar?~~

~~5 A. Never a word.~~

~~6 Q. Has he ever discussed with you his relationship  
7 with Del Mar?~~

~~8 A. No. And I never asked.~~

~~9 Q. Have you ever had any difficulty finding crew  
10 members for this vessel?~~

~~11 A. Not really, but there aren't any crew members  
12 around -- is another problem: You have difficulties on  
13 any vessel, finding them. But this has been a pretty  
14 cushy job for anybody that's been working on it. Like I  
15 say, there's not any maintenance work to do per se on  
16 the vessel, like painting every six months or something  
17 like that. It's beyond that, so --~~

~~18 Q. If you had let the crew members go that were on  
19 board the vessel at the time -- well, withdrawn.~~

~~20 When the vessel came back from arrest in  
21 August, who were the crew members you hired then?~~

~~22 A. I had the same guys as when it was arrested.  
23 Like I say, Barry gave them a little bit of money, and I~~

~~24 loaned them some money personally. That kept them going  
25 here in town so they could get through.~~

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<p style="text-align: right;">70</p> <p>1 Q. If they had not been available, do you have any</p> <p>2 reason to believe you would have had difficulty finding</p> <p>3 someone to crew the vessel?</p> <p>4 A. Not at all. I've got several guys that want a</p> <p>5 job, and they would quit whatever job they have now to</p> <p>6 come with me if I called upon them.</p> <p>7 Q. So, you could have crewed this vessel</p> <p>8 regardless?</p> <p>9 A. Sure. It might take a day or two now and then,</p> <p>10 because sometimes there aren't any. But I have a few</p> <p>11 people who want a job.</p> <p>12 <del>(Court reporter interruption)</del></p> <p>13 <del>THE WITNESS: A few</del></p> <p>14 MR. POULOS: Q. During the time that you've</p> <p>15 been employed on the vessel, has it ever fished outside</p> <p>16 of California or EEZ waters?</p> <p>17 A. No, sir.</p> <p>18 Q. Did Barry ever discuss with you the possibility</p> <p>19 of taking the vessel down to Mexico?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you know if the vessel has a Mexico fishing</p> <p>22 permit?</p> <p>23 A. It did have one at one time, maybe. I'm not</p> <p>24 sure if it's valid now or if it was just a short period</p> <p>25 thing. It was down there at one time, but -- it was on</p>	<p style="text-align: right;">72</p> <p>1 <del>A. It was a lot later. I was down in Moss Landing</del></p> <p>2 <del>for a while.</del></p> <p>3 Q. Are you still doing your fishing for Caito?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you sell fish to anyone else?</p> <p>6 <del>A. No.</del></p> <p>7 Q. Once the vessel was released from arrest and</p> <p>8 started fishing again, did you feel you have any ongoing</p> <p>9 losses as a result of the arrest of the vessel in terms</p> <p>10 of inability to fish?</p> <p>11 A. Not after we got the vessel back, no.</p> <p>12 Everything was all right then. <del>We had to get another</del></p> <p>13 <del>net, though.</del></p> <p>14 Q. Right.</p> <p>15 A. Another thing about that net -- I'll just</p> <p>16 explain one more thing about that, too, that isn't in</p> <p>17 any of this stuff. It's an 8-inch footrope, which you</p> <p>18 have to have to use inside of 100 fathoms. If you go</p> <p>19 inside of 100 fathoms with that net on the boat, you</p> <p>20 can't have the other net on the boat; nothing bigger</p> <p>21 than 8-inch. So you have to take the net off and leave</p> <p>22 it somewhere. Like in the deeper water, I can have both</p> <p>23 nets on the boat with no problem. So that's why it was</p> <p>24 on the deck.</p> <p>25 Q. Do you have a vessel monitoring system on board</p>
<p style="text-align: right;">71</p> <p>1 the boat, I believe.</p> <p>2 Q. Has Barry ever discussed with you the</p> <p>3 possibility of declaring bankruptcy?</p> <p>4 A. No, sir.</p> <p>5 Q. Have you always, since you've been aboard the</p> <p>6 vessel, sold your catch to the same company?</p> <p>7 A. Well, I sold -- when I first got on the vessel,</p> <p>8 it was at Del Mar, when we were fishing for Joe, in the</p> <p>9 period I was working for Joe, which wasn't the best</p> <p>10 situation, either. But, then, when they decided to move</p> <p>11 the operation up to Astoria, I went and got a job with</p> <p>12 Caito Fisheries.</p> <p>13 Q. Caito is C-a-i-t-o.</p> <p>14 When you say you got a job with Caito, what</p> <p>15 does that mean?</p> <p>16 A. Well, I had to go ask them for a job, if I</p> <p>17 could sell fish to them, if they needed another boat.</p> <p>18 They have a plant up in Eureka and a plant in Fort</p> <p>19 Bragg.</p> <p>20 Q. So, in other words, the catch from the Point</p> <p>21 Loma is already agreed to be purchased by Caito</p> <p>22 Fisheries?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And that started up sometime after you joined</p> <p>25 the vessel?</p>	<p style="text-align: right;">73</p> <p>1 the vessel?</p> <p>2 A. What do you mean? Like a camera or things?</p> <p>3 Q. No. I understand that there's a system that</p> <p>4 they put like a transponder on.</p> <p>5 A. Oh, excuse me. VMS. I wasn't paying</p> <p>6 attention. We do have that, yes.</p> <p>7 Q. So who tracks that?</p> <p>8 A. There's an office -- it's a National Marine</p> <p>9 Fisheries office in Seattle. I call them up faithfully</p> <p>10 every day when I leave the port to make sure it's</p> <p>11 working, because I had some trouble with them.</p> <p>12 Occasionally, they call me now and tell me it's not</p> <p>13 working at the dock. So then I call the people that</p> <p>14 made it back in Maryland, and they tell me it is</p> <p>15 working. So when I leave, I make sure it's working.</p> <p>16 Q. So as far as you're aware, they know where you</p> <p>17 are at all times?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is the vessel currently insured?</p> <p>20 A. I wouldn't know. There's some papers on the</p> <p>21 boat that were from last year, I believe. I don't know.</p> <p>22 Q. Do you know if it was insured in 2006?</p> <p>23 A. I don't know for sure.</p> <p>24 Q. Have you had any crew injuries or anything</p> <p>25 where someone made a claim?</p>

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 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam* and,  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**DEFENDANTS BARRY COHEN,  
 CHRIS COHEN'S (aka CHRISTENE  
 COHEN) RESPONSE TO  
 PLAINTIFF'S FIRST SET OF  
 REQUESTS FOR ADMISSIONS**

PROPOUNDING PARTY: PLAINTIFF DEL MAR SEAFOODS, INC.

RESPONDING PARTY: DEFENDANTS BARRY and CHRISTINE COHEN

SET NO.: ONE

Defendants and Responding Parties, BARRY and CHRISTENE COHEN ("Responding  
 Parties"), respond and object to Plaintiff's First Set of Requests for Admissions as follows.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action and are subject to all  
 objections as to competence, relevance, materiality, propriety, and admissibility and any other  
 objections or grounds that would require the exclusion of any statement made herein if such



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statement were made by a witness present and testifying in Court, all of which objections and grounds are reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by these responses. The fact that Responding Parties respond or object to any of the request for admissions should not be taken as an admission that Responding Parties accept or admit the existence of any facts assumed by such request for admissions, or that such response or objection constitutes admissible evidence as to any such assumed facts. The fact that Responding Parties respond to part or all of any request for admission is not intended to and shall not be construed to be a waiver by Responding Parties of any objection to any request for admission. Furthermore, Responding Parties' responses herein are made without waiving, and expressly reserving, the right: (a) to object to any effort to use any responses in any step or proceeding in this action or any other action, and (b) to object on any ground to other discovery requests regarding the subject matter of any request herein.

This action is still in the discovery phase and Responding Parties have not yet completed investigation of the facts related to the action; have not yet completed discovery in this action; and have not yet completed preparation for trial. Responding Parties' responses herein are based on, and reflect the current state of their knowledge. Responding Parties expressly reserve the right to supplement these responses at a later time should they deem such supplementation necessary or appropriate, but assume no obligation to do so.

## RESPONSE TO REQUESTS FOR ADMISSIONS

### REQUEST FOR ADMISSION NO. 1:

Admit that you are acting in this case as the agent for the interests of your marital community.

### RESPONSE TO REQUEST NO 1:

~~Responding Parties object to the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the terms "acting" and "agent" as vague and ambiguous. Without waiving these~~

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1 objections, admit that Barry and Christene Cohen are each the agent of each other in their marital  
 2 community.

3 **REQUEST FOR ADMISSION NO. 2:**

4 Admit that in 2004 you transferred the ownership of the F/V POINT LOMA (the "Vessel")  
 5 to the F/V Point Loma Fishing Company, Inc.

6 **RESPONSE TO REQUEST NO. 2:**

7 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 8 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving  
 9 this objection, admit that Barry and Christene Cohen jointly transferred the ownership of the F/V  
 10 Point Loma to the F/V Point Loma Fishing Company, Inc.

11 **REQUEST FOR ADMISSION NO. 3:**

12 Admit that you are the manager of the F/V Point Loma Fishing Company, Inc.

13 **RESPONSE TO REQUEST NO. 3:**

14 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 15 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving  
 16 this objection, admit that Barry Cohen is the manager of the F/V Point Loma Fishing Company,  
 17 Inc.

18 **REQUEST FOR ADMISSION NO. 4:**

19 Admit that you and your wife each own 50% of the shares of the F/V Point Loma Fishing  
 20 Company Inc.

21 **RESPONSE TO REQUEST NO. 4:**

22 Responding Parties object to the use of the term "you" and "your" as vague and ambiguous  
 23 as to which responding party, Barry or Christene Cohen, the request is directed at. Without  
 24 waiving this objection, admit that Barry and Christene Cohen each own 50% of the shares of the  
 25 F/V Point Loma Fishing Company, Inc.

**REQUEST FOR ADMISSION NO. 5:**

Admit that in this case you are acting as the agent for the owner of the Vessel, the F/V Point Loma Fishing Company, Inc.

**RESPONSE TO REQUEST NO 5:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "agent" as vague and ambiguous. Without waiving these objections,~~ admit that Barry Cohen is acting as the agent to the extent he is acting as manager of the F/V Point Fishing Company, Inc.

**REQUEST FOR ADMISSION NO. 6:**

Admit that you have never used the Vessel to fish anywhere other than in the Exclusive Economic Zone off of California.

**RESPONSE TO REQUEST NO 6:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "fish" as vague and ambiguous to the extent Responding Parties make a distinction between "fishing" (catching fish) and "shrimping" (catching shrimp) activities. Without waiving these objections,~~ admit that Barry Cohen has never used the Vessel to fish anywhere other than in the Exclusive Economic Zone off of California although he used the Vessel only one time off the coast of Oregon approximately 8-10 years ago for shrimping activities and not for fishing.

**REQUEST FOR ADMISSION NO. 7:**

Admit that at the end of 2005, in a meeting with both Joe Cappuccio and Joe Roggio, they told you that Del Mar's bank that provided credit to Del Mar, had expressed its concern to Del Mar about the size of Del Mar's loan to you for the Vessel.

**RESPONSE TO REQUEST NO 7:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this~~

~~objection and without waiving it~~, deny that there was such a meeting with both Joe Cappuccio and Joe Roggio to the extent Barry Cohen can not recollect for certainty that Joe Roggio was also at the meeting.

**REQUEST FOR ADMISSION NO. 8:**

Admit that at the meeting with Joe Roggio and Joe Cappuccio at the end of 2005 Joe Cappuccio asked you to make a large payment on the loan evidenced by the Note and Mortgage.

**RESPONSE TO REQUEST NO 8:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving this objection~~, Barry Cohen responds that he can not recollect with certainty that both Joe Roggio and Joe Cappuccio were at the meeting; but admit that at a meeting with at least Joe Cappuccio at the end of 2005, Joe Cappuccio asked Barry Cohen to make a large payment on the loan evidenced by the Note and Mortgage.

**REQUEST FOR ADMISSION NO. 9:**

~~Admit that you agreed with Del Mar that you would be responsible for the debts of your sons, Michael and Leonard, to Del Mar arising from amounts they owed the Avila Beach joint venture.~~

**RESPONSE TO REQUEST NO 9:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies this request.~~

**REQUEST FOR ADMISSION NO. 10:**

~~Admit that when you made the \$175,000 payment to Del Mar, you told Joe Cappuccio you would pay Del Mar the remaining balance owed to Del Mar.~~

**RESPONSE TO REQUEST NO 10:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving~~



REQUEST FOR ADMISSION NO. 18:

Admit that on or about January 30, 2007 that you authored the document DMSI 0078.

RESPONSE TO REQUEST NO 18:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen responds that after a diligent search of his records he has no recollection of whether he authored the document DMSI 0078 and therefore denies this request.

REQUEST FOR ADMISSION NO. 19:

Admit that in approximately January 2007 Joe Roggio asked you to make payments on the amounts you owed Del Mar.

RESPONSE TO REQUEST NO 19:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the phrase "the amounts you owe Del Mar" as vague and ambiguous as to what specific amounts are being referred to. Without waiving this objection, Barry Cohen admits that Joe Roggio asked him to make payments but Joe Roggio did not say what the payments would be for or state the amount that the payments should be.

REQUEST FOR ADMISSION NO. 20:

Admit that Del Mar has a valid maritime lien on the Vessel.

RESPONSE TO REQUEST NO 20:

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to what constitutes a valid maritime lien. Without waiving this objection, admit that if Del Mar has a valid Preferred Ship Mortgage, then it has a security interest in the Vessel in the form of a maritime lien.

REQUEST FOR ADMISSION NO. 21:

Admit that under the terms of the Mortgage that you signed (DMSI 0101-DMSI 0110) Del Mar is not, and was not, required to give you notice before foreclosing on the Mortgage.

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SECTION  
FED. R.  
EVID. 403  
(NEEDLESS  
CUMULATIVE  
EVID.);  
PARTIES  
HAVE  
STIPULATED  
IN PRETRIAL  
ORDER, SHIP  
FACT #5  
THAT DEL  
MAR HAS  
VALID PREFERRED  
SHIP MORTGAGE  
ON THE  
VESSEL.

**REQUEST FOR ADMISSION NO. 24:**

Admit that from January 1, 2004 until December 22, 2004 you failed to make a single payment to Del Mar towards your obligations under the Note and Mortgage.

**RESPONSE TO REQUEST NO 24:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving this objection, Barry Cohen admits this request.~~

**REQUEST FOR ADMISSION NO. 25:**

Admit that after your \$5,000 payment dated December 22, 2004 you did not make another payment until November 9, 2005.

**RESPONSE TO REQUEST NO 25:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that he did not make another payment by check until November 9, 2005, when the Cohens made a lump sum payment on the Note in the amount of \$175,000, although plaintiff's spreadsheet labeled DMSI 0001 shows other "payments" credited against the amount Barry Cohen allegedly owes them during the time period from December 22, 2004 to November 9, 2005.~~

**REQUEST FOR ADMISSION NO. 26:**

Admit that your last payment to Del Mar was on April 23, 2007.

**RESPONSE TO REQUEST NO 26:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that his last direct payment by check was April 23, 2007, although by virtue of his lump sum advance payment in the amount of \$175,000,~~

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he continues to make payments and is current under the Note and Mortgage through at least February 2009.

**REQUEST FOR ADMISSION NO. 27:**

If your response to the previous Request was to admit it, also admit that after your last payment on April 23, 2007 there was an outstanding balance due under the Note and Mortgage.

**RESPONSE TO REQUEST NO 27:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that there is an outstanding balance remaining under the Note and Mortgage in the amount of \$27,000 although no payments are currently due until at least February 2009.~~

**REQUEST FOR ADMISSION NO. 28:**

If your response to Request No. 26 was anything other than an unqualified "admit," admit that you currently owe money to Del Mar under the Note and Mortgage.

**RESPONSE TO REQUEST NO 28:**

~~Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that there is an outstanding balance remaining under the Note and Mortgage in the amount of \$27,000 although no payments are currently due until at least February 2009.~~

**REQUEST FOR ADMISSION NO. 29:**

Admit that the Vessel is your only source of income, other than Social Security.

**RESPONSE TO REQUEST NO 29:**

~~Responding Parties object to the use of the term "your" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties~~

1 RESPONSE TO REQUEST NO. 32:

2 Responding Parties object to the use of the term "you" as vague and ambiguous as to  
 3 which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this  
 4 objection and without waiving it, Barry Cohen cannot admit or deny this request because he lacks  
 5 sufficient information to identify the account number of one of plaintiff's own checking accounts.  
 6 ~~Barry Cohen further denies that there was a joint venture involving Old Port Fisheries.~~

7 REQUEST FOR ADMISSION NO. 33:

8 Admit that you agreed to pay Del Mar for its attorneys fees it incurred in the Avila Beach  
 9 litigation you instituted against the Port of Avila Beach.

10 RESPONSE TO REQUEST NO. 33:

11 ~~Responding Parties object to the use of the term "you" as vague and ambiguous as to~~  
 12 ~~which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this~~  
 13 ~~objection and without waiving it, Barry Cohen admits that in a meeting with Joe Roggio, he~~  
 14 tentatively and orally agreed to pay the legal fees; however, he received no consideration, felt  
 15 pressure to make such an agreement as he was an employee of Del Mar at the time, never received  
 16 an accounting as to the amount of the fees, and never agreed, orally or otherwise, to add these fees  
 17 to the Note.

18  
 19 DATED this 21st day of December, 2007.

20  
 21 Respectfully submitted,

22 DAVIS WRIGHT TREMAINE LLP

23  
 24 By 

25 James P. Walsh  
 26 Gwen Vanger

27 Attorneys for DEFENDANTS and  
 28 CLAIMANT BARRY COHEN, CHRIS  
 COHEN (aka CHRISTENE COHEN), the F/V  
 POINT LOMA and Claimant, F/V POINT  
 LOMA FISHING COMPANY, INC.

DAVIS WRIGHT TREMAINE LLP



**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

I caused to be served the foregoing **DEFENDANTS BARRY COHEN, CHRIS COHEN'S (aka CHRISTENE COHEN) RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS** on the parties indicated below by the following means:

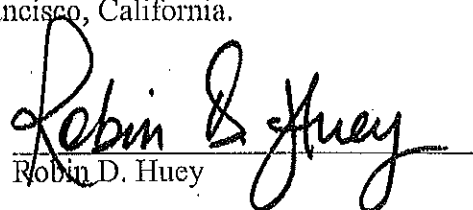
I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on December 21, 2007, following the ordinary business practice to the following:

Gregory W. Poulos  
Max L. Kelley  
Cox, Wootton, Griffin,  
Hansen & Poulos LLP  
190 The Embarcadero  
San Francisco, CA 94105

Richard P. Wagner  
The Law Offices of Richard P. Wagner  
400 Oceangate, Suite 700  
Long Beach, CA 90802

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on December 21, 2007, at San Francisco, California.

  
Robin D. Huey

DAVIS WRIGHT TREMAINE LLP

DAVIS WRIGHT TREMAINE LLP

James P. Walsh, CSB. No. 184620  
Gwen Fanger, CSB No. 191161  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111-3611  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599  
budwalsh@dwt.com

Attorneys for Defendants and Claimant  
BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,  
Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and,  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8 foot long fishing vessel, her engines,  
tackle, furniture apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

No. C-07-2952-WHA

**DEFENDANTS BARRY COHEN,  
CHRIS COHEN'S (aka CHRISTENE  
COHEN) SECOND SUPPLEMENTAL  
RESPONSE TO PLAINTIFF'S FIRST  
SET OF INTERROGATORIES**

PROPOUNDING PARTY: PLAINTIFF DEL MAR SEAFOODS, INC.

RESPONDING PARTY: DEFENDANTS BARRY and CHRISTENE COHEN

SET NO.: ONE

Barry and Christene Cohen ("Responding Parties") hereby submit the following Second  
Supplemental Response to Plaintiff's First Set of Interrogatories (the "Interrogatories"),  
propounded by Plaintiff, Del Mar Seafoods, Inc. ("Del Mar").

1 on the grounds that the definitions of "YOU," "YOUR," "defendants," and "YOURSELF" are  
 2 overbroad, unduly burdensome and oppressive.

3 Responding Parties adopt the terms defined by the Plaintiff solely for convenience in  
 4 responding to the requests herein. Responding Parties do not accept or concede that any of the  
 5 terms or definitions is appropriate, descriptive or accurate. The above general objections are  
 6 incorporated into each response below.

### 7 SUPPLEMENTAL RESPONSES TO INTERROGATORIES

#### 8 INTERROGATORY NO. 12:

9 State what YOUR gross earnings were for each voyage of the Vessel between October 31,  
 10 2001 and the present.

#### 11 RESPONSE TO INTERROGATORY NO. 12:

12 ~~Responding Parties renew their object to this interrogatory on the grounds that it is overly~~  
 13 ~~broad and unduly burdensome as it requests gross earnings for each voyage of the Vessel back to~~  
 14 ~~2001, well before the timing of the underlying issues in this case. Responding Parties further~~  
 15 ~~object on the grounds that it requests confidential, competitive information and is irrelevant to the~~  
 16 ~~underlying issues in this case, namely the amount of the debt remaining under the Note (signed in~~  
 17 ~~2003) and the wrongful arrest of the Vessel. Without waiving these objections, Responding~~  
 18 ~~Parties respond as follows with respect to the gross receipts of the Vessel's fishing operations:~~

20	2003:	\$33,750
21	2004:	\$291,882
22	2005:	\$222,875
23	2006:	\$330,804
24	2007:	Not yet determined

#### 25 INTERROGATORY NO. 13:

26 State what YOUR net earnings (gross earnings less expenses) were for each voyage of the  
 27 Vessel between October 31, 2001 and the present.

**RESPONSE TO INTERROGATORY NO. 13:**

~~Responding Parties renew their objections to this interrogatory on the grounds that it is overly broad and unduly burdensome as it requests gross earnings for each voyage of the Vessel back to 2001, well before the timing of the underlying issues in this case. Responding Parties further object on the grounds that it requests confidential, competitive information and is irrelevant to the underlying issues in this case, namely the amount of the debt remaining under the Note (signed in 2003) and the wrongful arrest of the Vessel. Without waiving these objections,~~

Responding Parties respond as follows with respect to the annual operating income of the vessel (gross receipts minus operating expenses, together with a listing of expenses for each year):

2003: \$22,154

Expenses: \$898 (supplies); \$8,959 (interest expense); \$96 (permits and fees); \$621 (taxes and licenses); \$1,022 (port fees and similar items). Total operating expenses: \$11,596.

2004: \$24,109

Expenses: \$100,732 (crew costs); \$76,501 (fuel & ice); \$24,203 (repairs); \$18,542 (supplies); \$31,265 (insurance); \$8,491 (interest expense); \$2,020 (legal and professional fees); \$2,193 (taxes and licenses); \$3,172 (port fees and similar items); \$654 (other operating expenses). Total operating expenses: \$267,773.

2005: \$5,978

Expenses: \$81,926 (crew costs); \$58,222 (fuel & ice); \$28,574 (repairs); \$13,226 (supplies); \$18,566 (insurance); \$7,716 (interest expense); \$478 (permits and fees); \$1,966 (taxes and licenses); \$3,490 (port fees and similar items); \$2,733 (other operating expenses). Total operating expenses: \$216,897.

2006: \$49,925



Expenses: \$124,925 (crew costs); \$83,963 (fuel & ice); \$24,349 (repairs); \$3,499 (supplies); \$31,168 (insurance); \$4,500 (interest expense(est.)); \$2,444 (legal and professional fees); \$565 (permits and fees); \$1,230 (taxes and licenses); \$2,441 (port fees and similar items); \$1,795 (other operating expenses). Total operating expenses: \$280,879.

2007: Not yet determined

Dated: January 11<sup>th</sup>, 2008.

DAVIS WRIGHT TREMAINE LLP

By:

James P. Walsh  
Gwen Fanger

Attorneys for DEFENDANTS and  
CLAIMANT BARRY COHEN, CHRIS  
COHEN (aka CHRISTENE COHEN), the F/V  
POINT LOMA and Claimant, F/V POINT  
LOMA FISHING COMPANY, INC.

DAVIS WRIGHT TREMAINE LLP

**VERIFICATION**

I, Barry A. Cohen, declare:

I am authorized to sign this Verification on behalf of Responding Parties. I have read the foregoing Second Supplemental Responses to Plaintiffs First Set of Interrogatories to Defendants Barry and Christene Cohen and know the contents thereof, and based on information and belief, I believe the responses to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 11 day of January, 2008 at AVILA BEACH, California.

  
Barry A. Cohen

DAVIS WRIGHT TREMAINE LLP

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DEFENDANT'S SECOND SUPP. RESPONSE TO PLAINTIFFS FIRST SET OF INTERROGATORIES  
Case No. C-07-2952-WHA

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1-11-08 12:00PM FROM-DWT SF

Received 01-11-08 11:33am

From-

To-DWT SF

Page 001

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

I caused to be served the foregoing **DEFENDANTS BARRY COHEN, CHRIS COHEN'S (aka CHRISTENE COHEN) SECOND SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** on the parties indicated below by the following means:

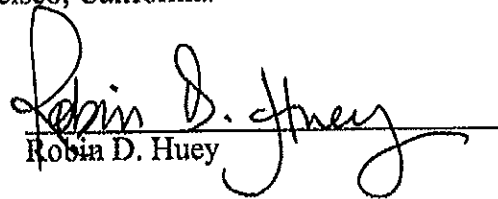
I enclosed a true and correct copy of said document in an envelope, and consigned it for hand delivery by messenger on January 11, 2008, following ordinary business practice to the following:

Gregory W. Poulos  
Max L. Kelley  
Cox, Wootton, Griffin,  
Hansen & Poulos LLP  
190 The Embarcadero  
San Francisco, CA 94105

Richard P. Wagner  
The Law Offices of Richard P. Wagner  
400 Ocean Gate, Suite 700  
Long Beach, CA 90802

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on January 11, 2008, at San Francisco, California.

  
Robin D. Huey